United States Court of Appeals for the Second Circuit

APPENDIX

77-1442

B

P/s

United States Court of Appeals
For the Second Circuit

UNITED STATES OF AMERICA,
Appellee,

v.

WILLIAM F. HASENSTAB,
Appellant.

Appeal of Hasenstab from the Judgment of Sentence of the United States District Court for the Southern District of New York, at Criminal No. 77-509.

APPELLANT'S APPENDIX
(Vol. I – Pgs. 1a-9a, 1-374)

FRIEDMAN, FRIEDMAN, LEVY
& BOTTIGLIERI, P.C.
Attorneys for Appellant
655 Madison Avenue
New York, New York 10021
(212) 371-9133

UNITED STATES COURT OF APPEALS
FILED
DEC 9 1977
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

Dick Bailey Printers, 290 Richmond Ave., Staten Island, N.Y. 10302
Tel.: (212) 447-5358

PAGINATION AS IN ORIGINAL COPY

TABLE OF CONTENTS

Page

Pertinent Docket Entries 1a

Indictment 2a

Judgment and Commitment 8a

Transcript of Testimony 1-735

Witnesses for Government

Walter O'Toole, direct 69
cross 115
redirect 267

Nicholas DiNapoli, direct 284
cross 292
redirect 310

George J. Barney, direct 311
cross 384

George Kassab, direct 481
cross 488

Witnesses for Defendant

Saul Welger, direct 539
cross 549
redirect 559

Summation by Government 603

Summation by Defense 620

Court's Charge 641

PERTINENT DOCKET ENTRIES

7-5-77 Filed indictment--Ward, J.

7-14-77 Deft. pleads not guilty. Passport to be surrendered to AUSA.

8-16-77 Filed Govts. notice of motion and affidavit for an order directing discovery and inspection pursuant to Rule 16(b).

8-19-77 Filed order approving above motion.

8-22-77 Filed memo-endorsed on motion. Motion granted on consent.

8-23-77 Filed Govts. requests for the voir dire.

8-23-77 Filed defts. requested voir dire.

8-23-77 Filed defts. affidavit in support of application to suppress a statement taken from an agent of the FBI.

8-25-77 Filed Govts. request to charge.

8-25-77 Filed defts. request to charge.

8-22, 8-23, 8-24, 8-25 -- Jury trial.

8-25-77 Defts. motion for acquital on counts 1, 2 & 3 denied.

8-26-77 Trial continued. Jury verdict guilty on counts 1, 2 & 3.

10-6-77 Filed judgment and probation/commitment order. Deft. sentenced to six (6) months on count 1. Imposition of sentence suspended on count 2, and deft. is placed on probation for a period of two (2) years, subject to standing probation. Deft. fined $7,500 on count 3 and is ordered to stand committed until fine is paid or otherwise discharged by court.

10-6-77 Deft. released onhis own recognizance until 10-20-77 at which time he is to surrender to U.S. Marshall.

10-17-77 Filed notice of appeal.

:dl UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
-------------------------------x

UNITED STATES OF AMERICA, :

:

-v- : **INDICTMENT**

WILLIAM E. HASENSTAB, : 77 Cr. 509

Defendant.

-------------------------------x

COUNT ONE

The Grand Jury charges:

1. From in or about 1968 up to and including the date of the filing of this indictment, in the Southern District of New York and elsewhere, WILLIAM E. HASENSTAB, the defendant, unlawfully, wilfully and knowingly did devise and intend to devise a scheme and artifice to defraud Pan American World Airways, Inc. ("Pan American"), and its shareholders, officers and directors of his honest and faithful services as their employee, and of more than $45,000 of their money and property, by means of false and fraudulent pretenses, representations and promises, and for the purpose of executing such scheme and artifice and attempting so to do, did place and cause to be placed in post offices and authorized depositories for mail matter and did cause to be delivered by mail according to the direction thereon certain mail matter to be sent and delivered by the United States Postal Service.

2. It was a part of said scheme to defraud that the defendant WILLIAM E. HASENSTAB would and did utilize his official position as Supervisor of the Office and Passenger Service Support Department of Pan American to select in an unfair and corrupt manner particular suppliers from whom Pan American purchased computer paper, commercial forms and other paper products.

3. It was further a part of said scheme to defraud that during the period 1968 through 1976 the defendant WILLIAM E. HASENSTAB arranged to receive secret cash kickbacks from the President of Tabulating Stock Forms, Inc., in connection with purchases by Pan American of computer paper, stock forms and other paper products from Tabulating Stock Forms, Inc.

4. It was further a part of said scheme to defraud that during the period 1968 through 1976 the defendant WILLIAM E. HASENSTAB received secret cash kickbacks in excess of $45,000 on purchases by Pan American from Tabulating Stock Forms, Inc.

5. It was further a part of said scheme to defraud that the defendant WILLIAM E. HASENSTAB would arrange periodic meetings with the President of Tabulating Stock Forms at Charlie Brown's Ale & Chop House in the Pan American Building, New York, New York as well as at J.F.K. International Airport, Queens, New York and at Hamilton House, Brooklyn, New York, for the purpose of receiving secret cash kickbacks.

3A

6. It was further a part of said scheme to defraud that the defendant WILLIAM E. HASENSTAB deliberately rigged the bidding on certain commercial paper contracts in order to facilitate directing the business to Tabulating Stock Forms, Inc. in return for secret cash kickbacks.

7. It was further a part of said scheme to defraud that the defendant WILLIAM E. HASENSTAB deliberately concealed from and failed to disclose to the officers and management of Pan American the aforementioned secret kickbacks, and submitted false and fraudulent responses to several Pan American Audit Committee inquiries concerning "Conflicts of Interest and Violations of Trust" in which he falsely denied soliciting or accepting personal benefits from any person engaged in business with Pan American.

(Title 18, United States Code, Sections 1341 and 2.)

COUNT TWO

The Grand Jury further charges:

1. From in or about 1968 up to and including the date of the filing of this indictment, in the Southern District of New York, and elsewhere, WILLIAM E. HASENSTAB, the defendant, unlawfully, wilfully and knowingly did devise and intend to devise a scheme and artifice to defraud Pan American World Airways, Inc., its shareholders, officers and directors, by means of false and fraudulent pretenses, representations and promises and for the purpose of executing said scheme and artifice to defraud and attempting so to do, did commit and cause to be transmitted by means of wire communications in interstate commerce, signals and sounds, to wit, telephone calls.

2. The allegations contained in Count One of this indictment are repeated and realleged as though fully set forth herein as constituting and describing the means by which the defendant committed the offense charged in Count Two of this indictment.

(Title 18, United States Code, Sections 1343 and 2.)

COUNT THREE

The Grand Jury Further charges:

1. From in or about 1968 and continuously thereafter up to and including the date of the filing of this indictment, in the Southern District of New York and elsewhere, WILLIAM E. HASENSTAB, the defendant, and Tabulating Stock Forms, Inc., named herein as a co-conspirator but not as a defendant, unlawfully, wilfully and knowingly did combine, conspire, confederate and agree together and with each other to commit certain offenses against the United States, to wit, violations of Sections 1341 and 1343 of Title 18, United States Code.

2. It was a part of said conspiracy that the defendant WILLIAM E. HASENSTAB and co-conspirator, Tabulating Stock Forms, Inc. would and did devise and intend to devise a scheme and artifice to defraud and to obtain money and property by means of false and fraudulent protenses, representations and promises and for the purpose of executing said scheme and artifice to defraud and attempting so to do would and did place and caused to be placed in post offices did cause to be delivered by mail and according to the direction thereon certain mail matter to be sent and delivered by the United States Postal Service.

RW:dl

3. It was further a part of said conspiracy that the defendant WILLIAM E. HASENSTAB and co-conspirator Tabulating Stock Form, Inc. would and did devise and intend to devise a scheme and artifice to defraud and to obtain money and property by means of false and fraudulent pretenses, representations and promises and for the purpose of executing said scheme and artifice and attempting so to do, would and did transmit and cause to be transmitted by means of wire communications in interstate commerce, signals and sounds, to wit, telephone calls.

4. The allegations contained in Count One of this indictment are repeated and realleged as though fully set forth herein as constituting and describing the means by which the defendant and co-conspirator committed the offense charged in Count Three of this indictment.

OVERT ACTS

In furtherance of said conspiracy and to effect the objects thereof, the defendant did commit the following overt acts, amount others, in the Southern District of New York and elsewhere.

1. In or about December, 1973, the defendant WILLIAM E. HASENSTAB agreed to direct certain Pan American purchases of paper products to Tabulating Stock Forms, Inc. in return for secret cash kickbacks.

2. On or about May 24, 1976, the defendant WILLIAM E. HASENSTAB caused a Pan American check in the amount of $[illegible],[illegible].22 to be transmitted to Tabulating Stock Forms, Inc. at 115 Broadway, New York, New York.

3. On or about July 26, 1976, the defendant WILLIAM E. HASENSTAB caused a check for $17,799.08 to be transmitted to Tabulating Stock Forms, Inc., at 115 Broadway, New York, New York.

4. On or about February 2, 1976 the defendant WILLIAM E. HASENSTAB transmitted a statement to the Pan American Audit Committee falsely denying any knowledge of his solicitation and receipt of cash kickbacks from "a person engaged in business with the Company."

(Title 18, United STates Code, Section 371.)

FOREMAN

ROBERT F. FISKE, JR.
Untied States Attorney

JUDGMENT AND COMMITMENT ORDER

Defendant has been convicted as charged of the offenses of unlawfully, wilfully and knowingly using the mails and wire communications in interstate commerce in a scheme and artifice to defraud (Title 18, U.S. Code, Sections 1341 and 2; and 1343 and 2.); and unlawfully, wilfully and knowingly combining, conspiring, confederating and agreeing to violate Sections 1341 and 1343 of Title 18, United States Code. (Title 18, U.S. Code, Section 371.)

The judge asked whether defendant had anything to say why judgment should not be produced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of Six (6) Months on count 1. Imposition of sentence is suspended on count 2, and defendant is placed on probation for a period of Two (2) years, subject to the standing probation order of this court. Probation on count 2 is to run consecutively to sentence on count 1.

The defendant is fined the sum of $7,500 on count 3, and is ordered to stand committed until the fine is paid or he is otherwise discharged by due course of law. The order that the defendant stand committed is stayed until October 20, 1977.

The defendant continued released on his own recognizance until October 20, 1977 at 10:30 A.M., at which time he is to surrender to the U.S. Marshal in Courtroom 506.

Docketed as a judgment No. 78, 147 on October 11, 1977.

* * * * * * * * * * * * * * * * * *

signed by U.S. District Judge Robert J. Ward.

Cl/

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-------------------------------x

UNITED STATES OF AMERICA vs. WILLIAM E. HASENSTAB, Defendant.	Before: HON. ROBERT J. WARD, D.J., and a Jury 77 CRIM. 509

-------------------------------x

U.S. DISTRICT COURT
FILED
OCT 18 197
S.D. OF N.Y.

New York, August 22,23,24,25,26, 1977

STENOGRAPHER'S MINUTES

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-------------------------x
United States of America :
v. : 77 Cr. 509
William E. Hasenstab, :
Defendant. :
-------------------------x

August 22, 1977,
10 A.M.

Before:

Hon. Robert J. Ward,
District Judge and a Jury.

Appearances:

ROBERT B. FISKE, JR., Esq.,
United States Attorney,
By: T. Barry Kingham, Esq.,
Assistant U.S. Attorney.

FRIEDMAN, FRIEDMAN, LEVY & BOTTIGLIERI, Esqs.,
Attorneys for Defendant
By: Richard D. Friedman, Esq.

(In the robing room.)

THE COURT: Good morning, gentlemen.

I understand that defendant's attorney has requested a conference with the Court prior to impaneling the jury.

You may proceed.

MR. FRIEDMAN: That's correct. I am Richard Friedman as I think your Honor is aware and the reason I have requested this conference is to take up with your Honor the subject of three matters which I think are relevant to the trial of this case.

The first is that as your Honor is aware we on July 25th approximately ten days after the arraignment, wrote a letter to Mr. Wing, sending a copy to your Honor, requesting certain specific information relative to the indictment.

One day before your Honor's office called us and advised that we were to be ready for trial, and I believe it was on last Monday, the prospective trial date, one day before that I called Mr. Wing and requested from him the information which had been the subject of my letter of July 25th.

On August 16, 1977, I received a response from my letter and I find that response unsatisfactory and if it possible now I would like to have an appropriate ruling on the issue that I raised. That, particularly is we had asked the government to provide us with the specific documents which the government would rely upon in reference to this transaction or these transactions, the subject of the indictment, which indictment alleges bid rigging, false misrepresentations and generally speaking a fraud perpetrated by the use of the mails.

The response which we received from the government under date of August 16th, received by our office on the 17th, indicates in paragraphs 2 thereof and 3 thereof that to the extent that the government intends -- I withdraw that.

I now quote:

"To the extent that the government intends to introduce into evidence orders placed by Pan American Airways with Tabulated Stock Forms, Inc., these orders have been made available for your discovery and inspection."

Continuing the quote:

"The government contends that all of these transactions were effected by either the influence of or the discretion of the defendant."

Now, in reference to bid rigging, we have no specification of which particular contracts it is contended by the government were the subject of the bid rigging. This response doesn't indicate that all of these transactions were the subject of bid rigging nor of course is there any indication of what the terms of the bid rigging was.

So, we find that it is very difficult for us, within the period of time allotted to us to prepare on this matter, to properly prepare.

We have also requested in our letter to the government in item number 7 a request that the government state that where it has alleged that any discretion, preference or other act of conduct alleged to be favorable to Tabulated Stock Forms, Inc., by the defendant, in derogation of his obligation to Pan American Airways, that the government set forth specifically what discretion, preference or favorable treatment was rendered to that company. We have not received that information but just a general statement and we don't feel that in this posture it is truly fair to the defendant to make us proceed without that information.

It may be that that information, if we are entitled to it will, if provided, let us go to trial right away. Maybe some complication would arise which we would then call to your Honor's attention but I point out to your Honor that I think we are entitled to that information and it was the obligation of the government to give it to us.

That's my first subject matter.

THE COURT: You may proceed.

MR. FRIEDMAN: Yes, your Honor. I have received from the government within the last few days a statement of that which purports to be the statement made by the defendant when interviewed by an FBI agent, Mr. Lynch. That statement in its typewritten form and the raw notes which were submitted to me make it appear in my judgment on the face of those documents that there should be a suppression of the defendant's statement.

It does not appear to me that there is any waiver of his rights or a proper fulfillment of the Miranda requirements. I have the documents here which your Honor may inspect in support of my application and I only received these documents within the last three days. I never had them before and I see your Honor is shaking his head and I can understand that problem but it is not my doing; it is rather the government's doing.

THE COURT: You may proceed.

MR. FRIEDMAN: On the third issue, if your Honor please, there is apparently a tape which I have been aware of and I have just received the transcript of it. Our office was able to pick it up on Friday. We received the copy of the tape a few days before that. We were allowed to listen to one tape on the date of the arraignment. The government had no copies for us nor a transcript.

It appears that the person on the tape was the defendant William Hasenstab, together with one George Barney. We contend that at a certain period of time George Barney became an agent for the government, paid or unpaid, and that he was specifically directed to seek admissions against interest from the defendant Hasenstab and that under those circumstances, as a government agent seeking admissions, the Miranda rule should have applied and the defendant advised of his rights and that the surreptitious conduct by the government under the circumstances deprived the defendant of his rights under Miranda.

Those are the three issues that I wish your Honor to rule on.

THE COURT: Do you have affidavits to support the oral statements which you have just made? If so, please hand them up.

MR. FRIEDMAN: No, sir, I do not have affidavits; just the documentation.

THE COURT: You have merely made conclusory statements at this point with reference to suppression and with reference to Hasenstab's conversation with Barney.

MR. FRIEDMAN: I have the documentation here, Judge.

THE COURT: Would you show it to me, as far as the Hasenstab-Barney allegation is concerned. You say you have evidence that Barney was an agent of the government when he had a telephone conversation with your client or some kind of a conversation with your client.

Would you show me the evidence that you have Mr. Barney was a government agent at the time he had the conversation with your client.

MR. FRIEDMAN: I think, Judge, the government will concede that the individual Barney was working for the government to secure the admissions at that time while awaiting sentence.

It was a case where he had been arrested and he had been sent by the government for the purpose of conferring with the defendant Hasenstab. I don't believe that there is any question about that whatsoever.

THE COURT: Well, I will hear from the government on all three matters.

First, there is an argument that has been presented to the court that the government has not provided all of the documents to which the defendant is entitled and, secondly, that the government has not responded adequately to paragraph 7 of the defendant's written requests and then the second major item is a belated request for a suppression hearing on a statement that the defendant appears to have made to Agent Lynch of the FBI and finally, there is apparently a motion or application to suppress the tape on the theory that it was obtained by Barney in his capacity as a government agent without his having warned the defendant of his constitutional rights.

I will hear you.

MR. KINGHAM: Your Honor, with respect to the discovery issue, first, the government has made available to defense counsel all of the documents in our possession obtained from Pan American Airways relating to the transactions that the defendant had and perhaps I should be more explicit.

The defendant was a supervisor of a buying unit in the purchasing section of Pan American Airways. As such, the individuals in his unit were responsible for letting bids and entering into contractual arrangements with people including Tabulating Forms, Inc., which was a company which supplied business forms and was headed by

George Barney. We have secured from Pan American at least for the years 1973 through 1976 the contracts, purchase orders, bid quotation sheets and so forth relating to the Pan American-Tabulating Forms transactions, so we have supplied and made those available to the defense counsel for his inspection and indeed Mr. Friedman has had people in our office during the last week and even before that to examine these documents.

Mr. Friedman wants to know which bids were rigged. It is the government's general allegation here that Mr. Hasenstab was in a position as the supervisor to give favored treatment to Mr. Barney overall and we are unable frankly to specify each and every transaction as rigged or to pinpoint which transactions were rigged. That I submit would have to await the testimony and cross-examination of Mr. Barney.

With respect to the second part of the discovery issue, that is, a response to what discretion or favor was rendered by the defendant, the point is that the defendant was in a position to bind Pan American to contractual arrangements with Mr. Barney. I think this has been clear to defense counsel from the indictment and I submit thatother than that the government need not specify any further discretion. He simply favored

Mr. Barney with Pan American's business in large amounts and we suggest that that is a sufficient response to the request for discovery.

THE COURT: He apparently wants to know which particular purchases contain some sort of a quid pro quo.

MR. KINGHAM: The quid pro quo was on an overall basis, your Honor, and we are unable to point to which specific purchase or purchases were affected. It is our position as Mr. Wing pointed out in the letter that the entire relationship between Pan American and Tabulating Forms was influenced and affected by the alleged kickbacks that were being paid by Mr. Barney to Mr. Hasenstab.

THE COURT: So I guess your position would be that every order which Pan American gave to Tabulating Forms, this supplier, during the period covered by the indictment was tainted by the payments.

MR. KINGHAM: That's correct, your Honor, at least in some fashion.

THE COURT: That's the usual situation in such matters. It is also, I would suggest, usual that the supplier is not an exclusive supplier. The thing at least has to look good from the point of view of others within the purchaser's department and company.

I gather what you have said is that you have provided all the documents which you have regarding the transactions between Pan American and Tabulating Forms. Is that a fair statement?

MR. KINGHAM: It is, your Honor.

THE COURT: And I gather your statement on the other is that there is no way to break down that this purchase is tied into this particular payment and this purchase is not.

MR. KINGHAM: That's correct, your Honor.

THE COURT: Very well.

MR. KINGHAM: It is our contention that the overall relationship is, as the Court says, tainted.

THE COURT: I presume you will produce proof that there were payments made to the defendant by Tabulating Forms during the period when Pan American was making purchases from Tabulating Forms; is that right?

MR. KINGHAM: Yes, your Honor.

THE COURT: Very well.

All right. I have your position with regard to the first point.

MR. KINGHAM: With regard to the second point, your Honor, the so-called Miranda claim --

THE COURT: This is with reference to the defendant's statement to Mr. Lynch.

MR. KINGHAM: Yes. Defendant was interviewed I believe on January 19, 1977, by special agent of the FBI named William Lynch. Mr. Hasenstab was interviewed at the security office of Pan American Airways. He was not in custody and that was made clear to him. I have supplied defense counsel with a copy of a warning and waiver of rights form which was signed by the defendant in the agent's presence after he was advised of his rights and subsequently Mr. Hasenstab made certain although brief admissions. He also during that conversation mentioned that he wouuld like to cooperate with the government but wanted to talk to his lawyer first and I believe that terminated the conversation.

I should make it clear that the government's position here is that regardless of Agent Lynch's excess of caution in advising Mr. Hasenstab of his rights--

THE COURT: That he didn't have to; that's your right.

MR. KINGHAM: That he didn't have to. There is no custodial interrogation nor any allegation by Mr. Hasenstab, by testimony, allegation or otherwise, that these admissions were somehow coerced from him.

THE COURT: That's why I asked if there were affidavits to be presented because that's the only way I suggest that counsel can bring this matter to the stage where a hearing would be appropriate.

I will hear you then on the third point.

Before we get to the third point, though, I would like to inquire what warning was in fact given by Mr. Lynch.

MR. KINGHAM: I don't have it with me now but perhaps counsel has a copy of the warning and waiver statement which I furnished to him -- I believe to his associate.

That's it.

MR. FRIEDMAN: I have it.

MR. KINGHAM: It is in writing and signed by the defendant.

THE COURT: What do you claim, Mr. Friedman, is missing from that warning that is required by Miranda?

MR. FRIEDMAN: Under the document or within the document of the handwritten notes of the agent if your Honor please at the hour of 2:40 P.M. Mr. Hasenstab is alleged to have made a response to the FBI and said that he wanted to cooperate but first he wanted to resign from his home town Police Department and consult with his attorney.

Immediately thereafter apparently then questioning took place by the agent without allowing the defendant to consult with his attorney and --

THE COURT: Did the defendant say he did not want to proceed with the matter and was he made to stay or directed to stay at this Pan American security offic

MR. FRIEDMAN: By --

THE COURT: By the agent, Mr. Lynch, or any one of his colleagues.

MR. FRIEDMAN: I don't see any writing to that effect, Judge, that he was made to stay but he was in the security office and apparently from the documents given to me, the questioning continued not withstanding the fact that the defendant had said that he wanted to first consult with his attorney and one having been given his rights any meaningful interpretation of those rights considering the nature and the setting of this atmosphere, the defendant having been brought by the security force of Pan American to the office and then being interrogated in a custodial setting, though not in an FBI building setting, he was within a room with the agents and I believe with the security agents of Pan Am and having indicated that he wanted to consult an attorney particularly after the alleged advice, you also have the right to stop answering at any time until you talk to a lawyer, when he indicated that he wanted to talk to a lawyer, I believe that the decisions say that the civilized means of resolving this issue is that the person when availing himself of his rights should be allowed to talk to his lawyer and the questioning should stop at that point. It is not necessary that the individual be chained or beaten that there be some lesser degree of coercion applied. He had indicated what he wanted to do.

THE COURT: Do you have an affidavit to that effect?

MR. FRIEDMAN: No, Judge. The time limits are so short that we have been given to prepare.

THE COURT: They are not short, counsel. You have said that twice now. Let me suggest, if I may, that Mr. Hasenstab was arraigned on July 14th. You had at that time until July 28th, which was two weeks, to make motions. None were made but an extension was requested and granted by this court.

My recollection is the extension took you to something in the neighborhood of August 10th and still no motion was made. The case was set down for trial as you know on August 15th. You were not present. An associate in your firm was here. The matter was fully reviewed on the record at that time and at the request of both sides the court put this case down for trial this morning.

I asked you this morning if you had any affidavit to support your own statements and you do not.

I must suggest that the Supreme Court has refused to extend Miranda to noncustodial investigation whether criminal or civil, in the Peckwith case with which I am sure you are familiar.

And it would appear from the presentation that you have made here that Mr. Hasenstab had not been arrested, was not in custody, was questioned at his place of business by an agent who gave him certain warnings.

I would gather from his position with the company that he was neither a youth nor a person of limited intelligence but apparently a businessman who had reached a substantially responsible position with a major corporation.

Under the circumstances I suggest that the showing which you have made to this point is inadequate.

I would permit you to make whatever further showing you can to persuade me that there was coercion on the part of the government but I would suggest to you that you should have done this already.

Let me proceed to hear counsel with regard to the third point and then I will rule on all three.

MR. KINGHAM: With respect to the tapes, the situation which will be established at trial is that Mr. Barney was arrested on November 1, 1976. Subsequently he agreed to cooperate in an ongoing investigation with our office.

With his consent on December 1, 1976, and again on January 6, 1977, he met with the defendant, Mr. Hasenstab and engaged him in conversation. On both of those occasions Mr. Barney was wearing a small recording device and tape recordings were made of their conversation, again with Mr. Barney's consent.

It is the government's position obviously that no Miranda warnings are required. Miranda applied only to the custodial interrogation, number 1 and number 2 only in the situation where the person was known to the defendant to be a government agent and indeed the government's position here is that Mr. Hasenstab was dealing with Barney and the thought that Mr. Barney was still a co-conspirator and had not, as it were, turned state's evidence and so our position is that these simply are valid consent tape recorded conversations and I think the record should be clear that even before the indictment was handed down in this case or at least around the time of the indictment, Mr. Friedman listened to a portion of one of the tape recorded conversations, that the government supplied Mr. Friedman with copies of both tape recorded conversations I believe on Tuesday of the past week which would have been the 23rd of August, that Mr. Friedman asked if we would have a transcript available. I supplied that on Friday evening to Mr. Di Piazza I believe who is associated with Mr. Friedman's firm and I might point out that obviously the government has no obligation to supply transcripts. That if the defendant wanted an earlier transcript, he could have prepared them himself. The tapes are quite audible. That's the government's position.

MR. FRIEDMAN: May I respond?

May I say if your Honor please that in reference to the first issue I would first appreciate it if I may have the documents which I have made mention of, that is, the interview by the FBI marked for identification as an offer of proof for the purpose of this application and may I suggest to your Honor that in my judgment, the Peckwith case does not require a custodial interrogation to mean that the person must be under arrest. He must be deprived of his freedom to walk about and leave and I think under the circumstances there was sufficient custodial interrogation to come within the meaning of the applicable cases and I think, as I indicated, once the defendant has said that he wants to consult with his attorney, it is the obligation of the federal agent to permit him to consult and to cease all questioning at that time.

THE COURT: All right. Let's take the material first and mark it and then I will hear you further.

We will take the two-page set of materials which start the interview log of William Hasenstab and the interrogation and advice of rights and we will mark that as Court's Exhibit 1 for identification. I will read it after that has been done.

Then the two pieces apparently of 3500 material-- wait. There is only one but you have given me two copies.

MR. FRIEDMAN: It is a document. I'm sorry.

MR. KINGHAM: It is really Rule 16 material, your Honor.

THE COURT: Right. Rule 16 is probably appropriate.

This will be Court's Exhibit 2 and let me read them more carefully now.

(Court's Exhibits 1 and 2 marked.)

(Pause)

THE COURT: I have reviewed the two Court's exhibits for identification. You addressed yourself to jbhh

the second point, counsel, of the three made and I don't think you addressed yourself in response to the first point and I think you still have to cover the third point.

On the first point, the government has indicated that they provided all the documents they have and they have indicated on the record their theory of the case. There isn't apparently a theory that there is a quid pro quo to get 20 percent on this order or $3,000 on that order but that there were payments made over a period of time for his seeing to it that this particular bidder received a certain amount of business.

That's the government's theory and it seems to me that they have told you what their theory is which is what you asked for.

MR. FRIEDMAN: But that is not the theory in the indictment. The indictment specifically alleges bid rigging. Bid rigging has a certain specific legal meaning.

THE COURT: It does to you but not necessarily, I would suggest, to the government. They have indicated what their theory is.

Apparently, Mr. Kingham has the cooperation of Mr. Barney at this point.

What, may I ask, does he say about quote rigging? Is there anything he says that is different than what you have said?

MR. KINGHAM: No, your Honor, and I think what Mr. Friedman is requesting is what the testimony of Mr. Barney will be as to exactly how Mr. Hasenstab worked the arrangement and I submit that the defense is not entitled to that.

THE COURT: That's correct.

MR. KINGHAM: I would resist any further discovery on that basis, awaiting the testimony of Mr. Barney.

B a.m. j blt 1

MR. FRIEDMAN: Item 6 of the indictment says that it was part of the scheme whereby Hasenstab deliberately rigged the bidding on certain commercial paper contracts in order to facilitate directing the business to Tabulating Stock Forms, Inc. in return for secret cash kickbacks.

THE COURT: Is that an essential element which the government must prove to sustain its claim? I don't belie it is. I don't even think it is an element here.

I haven't looked at the government's requests to charge which I received this morning indicating what the elements are.

You are talking about Count 1, right?

MR. FRIEDMAN: That's correct.

MR. KINGHAM: I don't believe it is an element, your Honor. It is merely one of the means --

MR. FRIEDMAN: I concede it is not an element, Judge.

THE COURT: Well, he has indicated what their overall proposed proof will be; that basically your client received money and this customer received orders and I think that's about the best he could be expected to do at this juncture other than to give you an examination before trial of Mr. Barney, which as you know, is not yet within the Federal Rules of Criminal Procedure.

jlt 2

MR. FRIEDMAN: And I don't think under the indictment the government should be allowed to prejudice the defendant by reading to the jury or making reference to the allegation in Paragraph 6 relating to bid-rigging, creating a suspicious --

THE COURT: I would be surprised if Mr. Kingham expects to get up and read the indictment. Do you, Mr. Kingham?

MR. KINGHAM: I do not, your Honor.

THE COURT: And the Court does not either. It is not my practice.

I will give the jury the option at the end of the case, should they wish to have the indictment in the jury room, to ask for it and do so and at that time, if there is a problem with it, you gentlemen will have ample time to indicate to me beforehand that there is a problem and if necessary, the indictment can even be redacted if there is agreement on that; but I do not intend to read the indictment this morning.

MR. FRIEDMAN: All right, sir.

THE COURT: Now let's pass to the third item.

Let me hear you on that.

MR. FRIEDMAN: I rely upon the Massiah case. I think that case stands for the proposition that the governmen may not engage in some type of surreptitious activity and use somebody and not disclose the identity for using him to have to go out and seek admissions against interest.

If in fact there had been a consentual recording or the person was an agent in the beginning, it was a normal transaction and when I say that, I mean a corrupt transaction which was recorded in the course of the business between the people, I might be persuaded to a different view, but I think where the government specifically engages a person for the purpose of going out to have a conversation with one to get admissions as to past alleged criminal activities and in this case that is what was obtained, well, how much have I paid you so far? Oh, yes, you have paid me whatever the amount is.

I don't believe that under Massiah that practice was condoned and accordingly, I don't think that that type of a conversation should be admitted.

THE COURT: Anything else?

MR. FRIEDMAN: Not on that issue.

THE COURT: On any issue?

MR. FRIEDMAN: I would just like to say for whatever effect it may have as to my diligence here:

Yes, we were given time to make motions, but we were also told that we were to ask the government for discove

jblt 4

by letter and get voluntary disclosure.

Mr. Wing was on vacation until the day that I requested him to follow through on the information that I requested and from the time that your Honor's office called and Mr. Wing returned from his vacation we then first started to get the information which we had requested and we have done the best that we have been able to do in terms of poring over hundreds or maybe a couple of thousand documents in a legal file drawer, getting me down to listen to a tape when it first came into the government's possession from the FBI; they didn't have one tape.

So without trying to burden your Honor, who I understand was out of town on some other case, without trying to burden --

THE COURT: I was not out of town. I was in the city and in touch on a daily basis.

MR. FRIEDMAN: Well, not in the courthouse, and I wasn't aware that you were in New York City, but in any event, we tried within the limits of our ability without the necessity of asking for rulings, to urge the government to give us as promptly as possible, what we were entitled to, which was all that we could do, without asking your Honor to do the same thing and we tried within the last 7 or 10 days to accumulate as much as we could for trial, and I ask your

jblt 5

Honor to be indulgent if we do not have an affidavit here.

My office has been under a state of renovations for weeks. All entire new construction, typewriters were not available, so we have tried and I ask your Honor to understand that. We are prepared to proceed, but I am just saying that it's been very difficult and we ask you to bear with us, because it's been difficult to work in our office. We have actually been closed for the two or three weeks involved.

THE COURT: The Court is prepared to rule on the motions made.

There are three branches to what I would call one motion:

The first branch calls upon the government to provide additional documents with regard to bid-rigging, false representations of mail fraud. The government has represented to the Court and to counsel that they have provided all of the documents in their possession which relate to these subjects. The Court accepts the government's representation.

Needless to say, if that proves to be not correct, the Court will hear the defense counsel and would grant an appropriate continuance if something is presented which was not heretofore provided on the representation of Mr. Kingham that the documents in the government's possession have all been provided to defense counsel, that branch of the defendant's motion is denied.

The defendant on a second and somewhat related branch of his motion has asked the government to particularize the nature and extent of the discretion, preference or other act of conduct alleged to be favorable to the seller in this case, Tabulating Stock Forms, Inc., by the defendant. The defense requested specifics so far as discretion, preference or favorable treatment is concerned and also a particularization of the transaction referred to.

The government responds by stating that the defendant by virtue of his position at Pan American was in a position to determine what bids to accept and what bids to reject. The government states that so far as it knows, there was no quid pro quo -- perhaps a percentage of a dollar amount in connection with each other over all purchases but rather the government contends that the defendant looked favorably overall upon the particular customer, Tabulating Stock Forms, Inc., approved purchases from that customer while at the same time receiving benefits presumably without the knowledge of superiors within the company.

I suggest that the government has set forth its theory with sufficient specificity at this time to apprise

jblt 7

the defendant of the government's theory of its case.

There apparently was no specific rigging of bids in connection with specific transactions but an overall trade of business for payments which apparently continued over a period of time.

I feel that the government has set forth its theory with sufficient specificity to appris the defendant of the government's theory of its case.

The second branch of the motion relates to an application to suppress the defendant's statement which was made to an agent of the Federal Bureau of Investigation on January 19, 1977. The application is based on an allegation by the defendant's counsel that the defendant, after a warning had been given which included a warning that the defendant had the right to answer questions without a lawyer present; had the right to stop answering at any time; and also had the right to stop answering at any time until he talked to a lawyer; the defendant in the first instance indicated thathe understood his rights and then indicated that he wanted to cooperate but at some point in time also indicated that the defendant wished to consult with his attorney.

At this point in time there has not been sufficient showing made to warrant suppression. However, I will direct, number one, that no reference to this statement be made in the opening statement and, number two, in the event that the defendant is able to present an affidavit which is more specific than the information which I presently have before me, which includes Court's Exhibits 1 and 2 for identification, I would be prepared, prior to any evidence being offered, as to admissions made on January 19th, to conduct a suppression hearing at which I would assume we would hear fro Agent Lynch, that we would know specifically how and what was said with reference to this matter of consulting with an attorney.

The record before me now is far from clear. I suggest though I don't believe it is sufficient for me to say, that a suppression hearing should be held as a matter of right; I think I am within my discretion in directing that no reference be made to the statement in the first instance and prior to Mr. Lynch's testifying, I will review whatever counsel presents to me and hear counsel further and will do that with the view in mind to conducting a suppression hearing on that matter.

So, on that I am denying the application now on th state of the present record, but I do so without prejudice to its being renewed by supplementary affidavit being presented, and I would, upon presentation of an affidavit which clarifies some of the ambiguities which are present before me, I would consider very seriously the matter of a suppression hearing prior to that statement being presented to the jury.

Turning to the final branch of the defendant's motion, which seeks to suppress, I believe it was two tapes, one of December 1, 1976 and one of January 6, 1977, on the ground that Mr. Barney, who was the party who was cooperating with the government at the time, was "a government agent," and that he was supposed to give Mr. Hasenstab a Miranda warning.

I suggest that by no stretch of the imagination do I believe a Miranda warning to have been required under Massiah or any other case with which I am familiar.

I suggest that at best, this argument would give rise to an entrapment defense and if counsel intends to argue entrapment, I suggest that I be apprised of that at this time so that I can give him an appropriate charge, but I would deny the motion so far as it seeks to suppress the tape or tapes of conversations between Hasenstab and Barney.

There is insufficient evidence before this Court to indicate to me that any Miranda warning would be required in the context of this particular conversation. This is typical of the government's activity in many areas, not only bribery, but in connection with other what I would call "white collar crimes" and also in connection with narcotic-related offenses.

The government manages to apprehend an alleged malfactor and he agrees to cooperate. He is then wired for sound and has a conversation with the subject and if the conversation proves to be fruitful, the government uses it. If the tape recorder doesn't work, the defendant often will utilize that to substantial advantage but by no stretch do I see a Miranda warning being required in the factual context which has been presented to me here.

Accordingly, the motion as it relates to the tape or tapes of December 1, 1976 and January 8, 1977 conversations with Mr. Hasenstab with Mr. Barney is denied.

The motions are accordingly disposed of as set forth in the oral decision. The one which you can appreciate will remain viable is the motion to suppress the defendant's statement or statements of January 19, 1977. I will be prepared to hear counsel further on that prior to the government offering evidence of that matter.

I have one more matter before me. There is a motion by the government directing discovery and inspection pursuant to Rule 16B of the Federal Rules of Criminal Procedure. It would appear that the defendant has sought and has availed himself of appropriate discovery. I am prepared to act on this motion unless some good and sufficient reason can be presented to persuade me to do otherwise.

MR. FRIEDMAN: We have no documentation, Judge. That may resolve the issue -- none that I am aware of presently which is in my possession which we have had access to which would to my knowledge be relevant to the general demand of the government.

THE COURT: Mr. Kingham, do you wish to have me grant me the motion, so order the production or are you prepared to stand on counsel's representation to the Court that he has no relevant material and mark the motion withdrawn without prejudice?

MR. KINGHAM: Your Honor, I would ask that it be withdrawn without prejudice to renewal because my experience in these matters has been that sometimes during the trial the defendant will come up with a document that he had forgotten about and I would request perhaps that the Court grant it to that extent, rather than withdrawing it, frankly.

MR. FRIEDMAN: I will consent to that, Judge. If I come upon anything I intend to use, I will give it to the government.

THE COURT: I expect that to be done reciprocally.

jblt 12

MR. FRIEDMAN: You mentioned entrapment as a possible defense and you wanted to be advised.

THE COURT: Yes.

In view of the comments you made, it was something that came to mind.

MR. FRIEDMAN: Entrapment would come to mind and if I would be compelled to say that we would ask for that charge, let me say that I would ask for a charge on that issue unless I otherwise withdraw my request.

THE COURT: Very well. I charged on that subject in Ordner. That particular charge was approved by the Second Circuit in the spring. You might look at that and it would be my expectation to follow the same charge that I had given previously which has been tested and has been approved but look at that decision.

I don't know that it is out in Federal Second yet, or in a slip, but it's U.S.A. v. William Ordner.

(Pause.)

I haven't sent for a jury panel. We will proceed very shortly to empanel a jury in this case. It is my expectation that we will empanel a jury of 12 plus 2 alternates.. The defense will have 10 preemptory challenges as usual, the government 6. Each of you will have one preemptory challenge to the 2 alternate jurors.

mblt 13

I have received voir dire requests from both sides. I will proceed with the voir dire in my own fashion, taking perhaps something from each one of you.

After I finish asking questions of the panel and of the individual jurors, I shall call you to the side bar to inquire if there are any additional questions you want me to put to the panel or to any individual jurors. After we have completed that, I will give you an opportunity still at the side bar, to challenge for cause. Following that we will proceed to the preemptory challenges.

I plan to put 35 people in what I will call the box, as many as fit into the jury box. The rest in order seated in the courtroom. You will address your challenges to the first 12 people. As they vacate their positions, their positions will be filled by jurors 13, 14 and so on.

MR. FRIEDMAN: May I inquire of your Honor's practice with respect to the exercise of the preemptory challenges, regarding how many are exercised by each side?

THE COURT: Six rounds. The board will first go to the defendant who will either exercise the two or waive both or one if he chooses not to exercise both.

The board will then come to the government; they will exercise one challenge and we will proceed that way for four rounds.

If you have done your arithmetic, you will figure out that at that point the defendant has exercised 8 and the government 4.

The final two rounds of the six, one and one, one and one and you will have the matter in hand.

MR. FRIEDMAN: Would it be a fair assumption that counsel are not bound to the selection of a juror becau he hasn't been challenged in a particular round?

THE COURT: He can be challenged at any time right up to the exercise of the last challenge. Sometimes we seem to find the same seats as being occupied and reoccupied. At other times you wait and see what happens.

Also, it is my normal practice but not inflexible, that the juror seated in seat 1 will be the foreman or forewoman, but I reserve the right to change that and the alternate for thatwould be to have the jury elect a foreman or forelady. So what I would suggest you do before you start addressing the juror in seat number 1 as "Mr. Foreman" or "Madam Forelady," that you inquire of me what I plan to do in this particular case. But it will work one of the two ways.

MR. FRIEDMAN: I understand that it was your Honor's intention to proceed with the jury selection today and then to start the trial itself tomorrow?

THE COURT: I gave you gentlemen the option of also opening today if you wish. I will leave that to your discretion. If you can agree on it, we will proceed as you agree and if you cannot agree I am prepared to defer the opening statements until tomorrow.

Do you have a preference on that?

MR. KINGHAM: I am prepared to open at any time. I can open today. I will be happy to.

MR. FRIEDMAN: I would be prepared to open, Judge. My opening is very brief, as you can well understand in this case.

2 A a.m. hblt 1

(A jury of twelve and two alternates was duly empanelled and sworn.)

THE COURT: Ladies and gentlemen, I am going to give you some brief preliminary instructions, and then I am going to excuse you with instructions that you return to begin hearing this case tomorrow morning at 10 a.m.

Some of you have served previously, but some have not and therefore, I would like to indicate to you what will be occurring over the next several days.

When we resume tomorrow morning, the government, represented by Mr. Kingham, will make an opening statement outlining the government's case. Then the defendant, represented by Mr. Friedman, will make an opening statement outlining the defense's case.

The opening statements are not evidence, but are merely to aid you in generally understanding the nature of th case and the significance of the evidence when it is introduced.

Following the opening statements, the government will proceed to present its case. The government will present witnesses and I assume documentary evidence. At the conclusion of the government's evidence, the defendant has the right to introduce evidence. However, as I said a few moments ago, while you were being empaneled, he need not do so.

In the event the defendant chooses to put in evidence, the government may then introduce rebuttal evidence. At the conclusion of all the evidence, the attorneys will make their closing arguments or summations to you. Those will be followed by my charge.

As I indicated, again while you were being empaneled, the law applicable to this case will be contained in the instructions I will give you during the course of the trial and in my charge at the end of the trial and it is your duty to follow all such instructions. It is your duty to determine the facts. You are the triers of the fact. Here you are supreme.

It is your duty to determine the facts and to determine them from the evidence and the reasonable inferences arising from such evidence, and in so doing, you must not indulge in guesswork or speculation.

As I have indicated, the evidence which you are to consider will consist of the testimony of witnesses and also the exhibits admitted in evidence. The admission of evidence in court is governed by rules of law. From time to time it may be the duty of the attorneys to make objections, and my duty as Judge to rule on those objections, and whether you can consider certain evidence. You must not concern yourself with the objections or the Court's reasons for these rulings. You must not consider testimony or exhibits to which an objection was sustained or which I have ordered stricken.

The opening statements as well as the summations of the attorneys are as I have indicated, intended to help yo in understanding the evidence and applying the law, but they are not evidence. You must not be influenced in any degree by any personal feeling of sympathy or prejudice against the government or the defendant for each side, the government and the defendant, each is entitled to the same fair and impartial consideration.

No statement or ruling or remark which I may make during the presentation of testimony is intended to indicate my opinion as to what the facts are. You are to determine the facts. In this determination, you alone must decide upon the believability of the evidence and its weight and value.

In considering the weight and value of the testimony of any witness, you may take into consideration the appearance, attitude and behavior of the witness, the interes of the witness in the outcome of the case, the relation of the witness to the government or the defendant, the inclination of a witness to speak truthfully or not, the probability or improbability of the witness' statements and all other

hblt 4

facts and circumstances in evidence.

Thus, you may give the testimony of any witness just such weight and value as you may believe the testimony o such witness is entitled to receive. Until this case is submitted to you following my charge, you must not discuss it with anyone or remain within the hearing of anyone discussing the case. Neither should you read any newspaper article, listen to any radio broadcast nor view any television program which discusses the case.

In the event you learn anything about the case from any source outside of the courtroom, you are directed to report the matter to me at once when you return to court.

After this case has been submitted to you, you must discuss it and then only in the jury room when all members of the jury are present. You are to keep an open mind and you must not decide any issue in this case until the case has been submitted to you for your deliberation under th instructions of the Court.

We are going to recess at this time.

My deputy clerk will escort you to the jury room which is just down the hall from the courtroom. You will report to that jury room tomorrow morning prepared to begin hearing this case at 10 a.m.

I have another matter scheduled for 9:30 which I anticipate will take no more than thirty minutes.

In the event the matter takes a few moments longer, I ask your indulgence. But from my best estimate, the case will begin tomorrow at 10 a.m. I anticipate that we will be concluding the day at the time of the luncheon recess tomorrow and then on Wednesday we will go into the full and regular days.

I have matters which are on both this afternoon and tomorrow afternoon which will have to remain in place.

The jury is excused. You are directed to reassemble in your jury room tomorrow morning, prepared to begin hearing this case at 10 a.m.

Mr. Guranich, would you show the jurors out through the door here to my right? Mr. Guranich will take you through, he will show you the jury room and you will reassemble in there ready to go tomorrow.

THE COURT: Remember your seating order tomorrow morning when you come back tomorrow.

If you have a problem, we will work it out tomorrow. Get home safely, everyone.

(Jury excused.)

THE COURT: Is there anything further?

MR. KINGHAM: Nothing for the government.

MR. FRIEDMAN: No, your Honor.

hblt 6

THE COURT: Very well. Court is adjourned. We will resume tomorrow morning at 10 a.m.

MR. KINGHAM: Thank you, your Honor.

(Adjourned to Tuesday, August 23, 1977, at 10 a.m.)

- - -

UNITED STATES OF AMERICA

vs. 77 Cr. 509

WILLIAM E. HASENSTAB

New York, New York
August 23, 1977 - 10 a.m.

- - -

(In open court - jury not present.)

THE CLERK: United States of America vs. William E. Hastenstab.

MR. KINGHAM: Government is ready, your Honor, good morning.

MR. FRIEDMAN: Defendant is ready, your Honor.

THE COURT: Very well.

MR. KINGHAM: Your Honor, I would like to hand up if I may, and have marked as Court's Exhibit number 3, I believe, which is the next in order, a copy of the letter hand-delivered by me this morning to Mr. Friedman, together with an index of the 3500 material which has been furnished Mr. Friedman this morning. The index, for your Honor's convenience, in case you should need it and the letter confirms the delivery.

THE COURT: Very well.

MR. FRIEDMAN: I acknowledge receipt of that letter, if your Honor please.

THE COURT: Thank you, gentlemen.

MR. FRIEDMAN: Your Honor please, I have pursuant to our discussion yesterday, prepared an affidavit which Mr.

Hastenstab has signed in reference to the issue of the takinq of the statement from him which I should like to submit to th Court. I have served a copy of such affidavit upon the government this morning and the original of the affidavit bears an initial for service and I have not prepared an affidavit by counsel nor a formal notice of motion as such in view of the nature of our discussion and just would request permission to submit this affidavit to your Honor.

(Pause.)

THE COURT: I have read the affidavit which I consider to supplement the oral motion which was made yesterday. Do you wish to address yourself to the matter at this time, Mr. Kingham?

MR. KINGHAM: Your Honor, I don't know if the affidavit requires any extended discussion. It would seem to me that the only difference between what Mr. Hasenstab says in his affidavit and what is apparent from the agents' interview logs is in the fourth paragraph thereof, in which he says that -- and I quote -- "After I told the agent that I wanted to consult with my attorney, he continued to question me and under the belief that his conduct was proper and that he had the authority to question me, I answered his questions."

And then onto the end of the paragraph. Of course the allegations with respect to rights violation are conclusory and the question of voluntariness, it seems to me, is raised only by the fifth paragraph where the defendant says he was deprived of his rights due to pressure applied to him by virtue of the atmosphere.

We will consent on the basis of this affidavit to a suppression hearing if the Court is so disposed. Agent Lynch is not expected to testify until tomorrow and perhaps the first order of business tomorrow afternoon depending upon where we are at the trial, might be appropriate to do that. It would be brief.

I would suggest Agent Lynch's direct testimony on this issue would only be about five minutes or so.

THE COURT: I have already indicated that neither counsel should refer to this matter in his opening statement, and I know that you will adhere to that.

My own thought in the matter is that the more prudent course would be to hold the suppression hearing and I suggest we will schedule it at some point in the day tomorrow prior to Agent Lynch's taking the stand.

Is that agreeable, gentlemen?

MR. FRIEDMAN: That's fine, your Honor.

I submitted the affidavit solely for the purpose of obtaining ruling if possible that we should be entitled to such hearing.

May I indicate for the record, Judge, that this morning I received from Mr. Kingham a subpoena which is directed to the defendant with a verbal request by Mr. Kingham that in the event the defendant does testify, he bring with him certain named items of a documentary nature and to the extent that we are able to comply with that subpoena, as a matter of fact, I would like to have that subpoena marked now because there may come a question as to the availability.

THE COURT: Certainly, we will mark that as Court's Exhibit 4, if you will hand it up to me.

THE COURT: Thank you, sir.

(Court's Exhibit 4 marked.)

THE COURT: It would seem that the defendant would have every right not to furnish his personal records here in advance of his being called, but once he is called, I would think if he had records, he would have two choices;

First, to take the dubious course of asserting the Fifth, which I don't think he would want to do; or second, to require an adjournment while he went to get his records. So under the circumstances, I have looked over the material and I suggest that I will make no ruling on it other than to make known the facts as they have been presented to me.

MR. FRIEDMAN: Thank you, Judge. We only submit that and request that it be marked as a Court's Exhibit on the issue of timeliness of the service and the request for the records.

I have scanned the documents and assuming that we would produce records in conformity with the subpoena, I don't know what the availability of such records would be.

THE COURT: I understand that some of the records, which go back to the year 1968 or '69, maybe 1970, '71, might not be readily available, but I would suggest that records for the more recent years should formally be available to an individual who at least keeps records reasonably.

I will cross that particular bridge when as and if we come to it.

MR. FRIEDMAN: Thank you, sir.

THE COURT: Anything further?

MR. KINGHAM: Nothing, your Honor. Thank you.

MR. FRIEDMAN: May I have the exhibit back after it is marked, your Honor?

THE COURT: Yes.

MR. FRIEDMAN: Thank you.

THE COURT: Are you gentlemen ready to proceed with your opening statements?

MR. KINGHAM: Yes, your Honor.

MR. FRIEDMAN: Yes, your Honor.

(The jury entered the courtroom.)

THE COURT: It would appear that Juror No. 5, Mr. Vega, is not here yet. We will wait for a couple of minutes and hope that Mr. Vega will appear. I had hoped to get started very promptly. I decided to wait 15 minutes. It is now a quarter past 10 and we will just be patient for a couple of minutes if you ladies and gentlemen would make yourselves comfortable here.

(Pause.)

(Jury all present.)

THE COURT: Good morning, ladies and gentlemen.

We will proceed now to the opening statements. You will hear first from Mr. Kingham on behalf of the government, and then from Mr. Friedman on behalf of Mr. Hasenstab.

After the opening statements, we will begin with the presentation of evidence.

Mr. Kingham.

MR. KINGHAM: Thank you, your Honor.

May it please the Court, Judge Ward, Mr. Friedman and members of the jury:

From about 1968 until late 1976, a corrupt businessman in this city paid more than $150,000 in cash kickbacks to equally purchasing agents and employees of the companies where he sold his product.

The government is going to prove to you in this trial in the next few days, that the man who is the defendant in this case, William Hasenstab, who sits in the middle of the three gentlemen at the defense table, received as much as $50,000 of the money paid by that businessman. That businessman is a man named George Barney, who was a salesman of printed business forms, and you will hear in this trial, that Mr. Hasenstab received this money in order to favor Mr. Barney's company with orders for printed forms from Pan Am, Pan American World Airways, a company you probably are familiar with, and a company where Mr. Hasenstab has worked for many years, eventually becoming a supervisor in the purchasing section at Pan Am.

And these two men, Mr. Hasenstab and Mr. Barney, would meet over the years at various locations here in New York City. Charley Brown's, a pub you might know in the Pan American Building up at Grand Central.

Mr. Hasenstab's office is at the Pan Am Building and later on out at Kennedy Airport, various spots in New York City, a restaurant called the Hamilton House in Brooklyn a restaurant called the Chelsea Restaurant out by the airport out by JFK. And on these occasions, which by 1973 were monthly meetings, Mr. Barney would dig into this pocket and come out with cash, cash for Mr. Hasenstab.

All in secret, all hidden from Pan Am.

By September, 1976, ladies and gentlemen, you will hear that these payments, these nice little monthly cash payments, reached the astounding sum of $3,000 a month in cash to Mr. Hasenstab. But then, Mr. Barney's firm, as you will hear, was a small firm, called Tabulating Stock Forms, Inc. They made computer paper, carbon forms, various business forms that a corporation would use.

By 1976, they were doing half a million dollars worth of business with Pan Am and most of that business came through and from Mr. Hasenstab.

That is what this case is about. It is about corporate corruption; it is about cash; it is about kickbacks and it is about fraud on Pan American. Because as we will prove, Pan American knew nothing about this.

We will prove that Pan Am did not know that their supposedly loyal employee ,Mr. Hasenstab, was pocketing over the years up to $50,000 of the money they were paying Mr. Barney for the printed forms.

As Judge Ward explained to you, I am the prosecutor in this case and it [illegible] my obligation to represent the government and to present the evidence for the prosecution and as Judge Ward also instructed you, the government's burden in a criminal case is to prove the defendant guilty beyond a reasonable doubt if you the jury are to convict him.

We accept that burden, and we will meet it. The purpose of my remarks now, and they will be brief, is to give you a preview of what you will hear in the government's case, sort of an outline of the government's evidence.

As you know, what brings us here together is the fact that Mr. Hasenstab is charged with certain federal crimes. Taking that money from Mr. Barney. The charges are as Judge Ward explained in an indictment.

Simply put, Mr. Hasenstab is charged with mail fraud and wire fraud. Wire fraud meaning telephones and simple to understand becuase the government charges here that in order to further his scheme with Mr. Barney, in order to further his scheme to defraud his employer, Pan American, Mr. Hasenstab knew and caused Pan American to use the mails and he himself used the interstate telephone. That is what "wire" means. Between New York and New Jersey, all in furtherance of this scheme over the years.

There is also a count, or a charge in this indictment, called the conspiracy count.

Conspiracy is a word you may have heard. It simply means joint action, and it is charged here that by doing this together with Tabulating Stock Forms, the company and its president, Mr. Barney, Mr. Hasenstab was in a conspiracy. Simply two people or more, joint action, acting together.

The object of all of this, we will prove to you, was to defraud Pan American, to defraud Pan American of Mr. Hasenstab's honest services as its employee and of about $50,000 of the money they would spend for business forms.

All right, how are we going to prove this?

You will hear witnesses as you would expect. People who come and sit in that box there and testify, and you will see some documents. To give you examples of the typ of forms that were used, the type of procedure that was used at Pan American, and you will hear a tape.

In fact, you are going to hear two tape recorded conversations. The defendant's own words. You may logically ask that is very nice,Kingham, but what is this evidence going to show?

It is going to show this:

Let me tell you the government's story, what we expect the evidence to show.

It is going to show that George Barney, corrupt businessman that I mentioned, had been in the printed forms business for many years and one of the customers that he had was Pan American.

Pan Am had been buying forms from Barney since the 1950's. First he worked with a big firm that you might have heard of, called Moore Business Forms, probably the largest in the country, and then he opened his own firm in the late '50s. This firm is called Tabulating Stock Forms, Inc.

T1B

Over the years as he dealt with Pan Am, he would deal with different buyers. The buyer obviously is the person who works for the company you are trying to sell to. In '67 or '68, George Barney met Bill Hasenstab who was the buyer for printed forms. He was the buyer that Mr. Barney was going to have to deal with at Pan American and so like many salesmen, Mr. Barney would begin to meet the buyer socially and he would meet Mr. Hasenstab up at Charlie Brown's on Friday nights at work and they would have a couple of drinks. And on these occasions, Mr. Barney would try to offer ballgame tickets, entertainment, various sort of small benefits to Mr. Hasenstab and Mr. Hasenstab would usually refuse them. And Mr. Hasenstab would make clear on these occasions that he wasn't interested in that kind of entertainment. He was interested in cash.

And so you will hear that in about 1968, George Barney began reaching into his pocket for cash and he would give Mr. Hasenstab 50 bucks, a hundred dollars maybe every couple of weeks or maybe every month and his business would increase so that by 1969, this little company was doing about $125,000 worth of business with Pan American. But in 1970, Mr. Barney's company had a strike and they were no longer able to handle the volume hbhh 2

of business that Pan American had for them and so the business dropped off to about $45,000 worth in 1972, until Mr. Barney was able to get going again. And when he did, some time in 1972 or '73, he went back to Bill Hasenstab because he knew Bill Hasenstab was the buyer. And he told Hasenstab that he was ready to go again. That Tabulating Forms could do Pan American's business and that he wanted to. And that he was also willing to get on a regular business arrangement for paying cash to Mr. Hasenstab in return for that business.

And that is just what happened. They resumed the payoffs. 250, 500, a thousand, 15,000, 2,000, 2,500 and finally by September, '76, $3,000 not a year, a month. Mr. Barney's business increased from $48,000 or something like that in 1972 to $498,000 by the end of 1976. Meanwhile you will hear that Mr. Hasenstab as I said, was a supervisor at Pan American and he had buyers working under him, fellows who were supposed to deal with the vendors like Mr. Barney. But not here, because in most cases for Mr. Barney's business, you will hear that Mr. Hasenstab did the pricing himself, that sometimes Mr. Barney would submit a quotation, what he was willing to do the work for and Mr. Hasenstab on occasion would tell him what the competition's prices were so Mr. Barney would know how to adjust his to be the lowest bidder and on occasion Mr. Hasenstab would not tell him what the competition's prices were but rather, would simply take Mr. Barney's bid and say oh, you can go up a little bit or you ought to go down a little bit and of course, Mr. Barney would get the business. That is not to say that the original companies didn't do business also. But we are talking here about Tabulating Forms.

As I mentioned before, we are going to prove to you that Pan American didn't know anything about this. And the way we will do that, is that every year, Pan American required employees at the managerial level, executiv like Mr. Hasenstab, to file a form called a conflict of interest form in which the employee or the manager agreed that he had not been taking kickbacks, had not been dealing in interests adverse to the company and Mr. Hasenstab filed this for '71, we have the '71 form, we will show you the '74 form, '76 form. Sent them into Pan Am, and we will prove that those are lies and all part of his fraud not to disclose how he was dealing in cash with Mr. Barney.

Finally, you will be with George Barney after his arrest. You will be with him in the Hamilton House Restaurant in Brooklyn, you will be with him in Mr. Hasenstab's car outside the Hamilton House in Brooklyn, you will be with him when he pays Mr. Hasenstab a thousand dollars in cash in the men's room of the Hamilton House Restaurant in Brooklyn and you will be with him when Mr. Hasenstab complains that he is not getting the $3,000 he is used to getting, and you will hear that in Mr. Hasenstab's own words on tape recorded conversations that were made with Mr. Barney's consent. What does all this have to do with mail fraud and wire fraud? It is very simple. The government will establish here that there was this scheme between Barney and Hasenstab to get Barney business in return for the kickbacks, that the business was conducted by mail with Pan American, by the telephone between their computer center in New Jersey and Pan American at JFK and it was conducted together between Mr. Hasenstab and Mr. Barney.

That might sound complex and you may think that I have used terms that you haven't heard like purchase orders and invoices and so forth. They will be explained by the witnesses. Let me say a word about George Barney. You will hear and I think you may find that he was during his years as president of Tabulating Forms a thoroughly corrupt businessman. We make no excuse for that. He paid employees of many companies about $150,000 over the year all of it in cash or most of it in cash. And you will hear that in 1976 Mr. Barney was arrested by the FBI and agreed to cooperate with the government in the investigation of corporate corruption and that after he agreed to cooperate with the government, you will hear that he gave information to the government and eventually pleaded guilty to two felony counts, two felony charges in this courthouse before Judge Owen and that he has not yet been sentenced and that part of his agreement with the government is that in return for Mr. Barney's cooperation, we will call his cooperation to Judge Owen's attention and tell Judge Owen exactly what cooperation Mr. Barney has given at the time that Mr. Barney is sentenced which has not yet happened.

So obviously, Mr. Barney has a reason for being here. And also obviously, the government considers Mr. Barney to be an important witness in this case becasue you ladies and gentlemen of the jury were not there with Hasenstab but Mr. Barney was. And he is what we call an insider, he was there. And he can testify about it. But at the same time, you ladies and gentlemen are the judges of the credibility in this case.And considering all the infirmities that Mr. Barney may labor under, you are obviously going to judge and weigh his testimony very carefully and scrutinize it as you should and as Judge Ward will instruct you to. But we will show you that there is evidence in this case that does not suffer from the frailties of human memory, from personal motive and that is the tape recordings. While I am on that, let me just say one brief word before I finish. As Judge Ward told you, the use of tape recordings by a consenting witness like Mr. Barney is perfectly lawful and is within the law and the government is entitled to do that during the course of its investigations. But as you will see, ladies and gentlemen, what is important about the tapes here is that they are proof positive of Mr. Hasenstab's guilt.

Some of you have been on juries before and those of you who have know that all the testimony in a trial doesn't come in through one witness. It comes in piecemeal. Different witnesses have different parts of a story to tell and it is not until the very end of the case that you have the whole picture and you are the ones who decide what the whole picture is. Testimony is punctuated by objections by the lawyers. Sometimes we have side bar conferences when the lawyers and Judge Ward will go over to the other side of the room and discuss evidence questions that have to be worked out of your presence. But those things interrupt the flow sometimes so I ask you if you would to be patient, be as attentive and as good as you have been by listening to me with all the witnesses who testify at this trial and I know you will. I also know you will keep an open mind which is very, very important in any criminal case. If you keep an open mind and wait until all the evidence is in before deciding the case, the government gets a fair trial, Mr. Hasenstab gets a fair trial and that is what we are here for. That is why we selected you, the defense and the government, together selected you as the jurors in this case because although our acquaintance yesterday was very brief it is clear that you will give both sides a fair trial here.

If you keep an open mind, if you base your decision in this case on the evidence, not on any kind of sympathy which you have sworn to forget about and decide it when all the evidence is in, and apply the sophistication you've got, the intelligence you have, the experience that you have from years of living in New York, you are going to convict Mr. Hasenstab.

THE COURT: Thank you, Mr. Kingham.

Mr. Friedman.

MR. FRIEDMAN: If your Honor please, Mr. Kingham, members of the jury, we too meet truly for the first time and as I start my side of this case in representing Mr. Hasenstab, you may feel after listening to the opening of Mr. Kingham which was very excellent how can Friedman say they are not going to show Mr. Hasenstab guilty beyond a reasonable doubt.

In view of what he has told us. What is the defense going to be in this case? How is Friedman going to on behalf of Mr. Hasenstab rebut the allegations and the contentions which Mr. Kingham has made. There is only one way in this case that they are going to be rebutted and that is by you listening to the evidence as Mr. Kingham has asked you to do and to the law that is given to you by Judge Ward. The nature of the proof in this case as they have been suggested to you by Mr. Kingham and as they will be suggested to you by me have to do with the three specific counts of the indictment in this case, and it is only to those charges that you have been sworn to render your verdictl

This is not a trial as to Mr. Hasenstab's morality, this is not an income tax evasion trial, rather the accusation is as Judge Ward has very briefly told you and as Mr. Kingham briefly told you not solely a charge of a fraud or a conspiracy or a charge of taking money but a charge of taking money, perpetrating a fraud, and Judge Ward will define to you what fraud is, a fraud upon not Mr. Barney, but a fraud upon Pan American, and furthermore, it is not charged that there is solely a fraud upon Pan America, but a wilful, intentional, knowledgeable use of the mails to procure this fraud. Because the basic charges under the two first counts of the indictment are mail fraud, and you are going to have to make a determination in this case and we are entitled to rely upon your integrity in making that determination as to whether or not there has been such a use of the mails as to constitute a mail fraud within the meaning of the statute.

And furthermore, whether or not there has been a conspiracy, corrupt agreement to defraud by use of the mails and we suggest to you that on both counts, the evidence will fall short of that proof. If you can't apply the presumption of innocence which Judge Ward has instructed you you are to apply at the outset in this case, then the defendant will not have a fair trial. He wants a trial on the issues of the accusations which have been made against him and only those.

You heard Judge Ward say to you that the defendant may not testify in such case and that you are not to hold such against him. But notwithstanding Judge Ward's admonition as to the applicable law in that respect, we are going to show in this case this defendant's background. We are going to show you that he did indeed work for Pan American for just under 22 years and that he is married, he was married some nine years ago, lives with his wife and children in New Jersey and that during the course of this investigation, and that during of this period of time before the trial, the FBI has visited his home community and spoken to his neighbors about him, and that the government has in fact subpoenaed his bank records. We are going to show that indeed he did meet Mr. Barney some years ago and contrary to what Mr. Kingham has just said Mr. Hasenstab made at that time no demands upon Mr. Barney, but rather it was Mr. Barney who attempted to seduce, if you will, to curry favor with Mr. Hasenstab.

Nothing to do with any conspiracy, nothing to do with any agreement which would violate the mail or wire fraud statutes the essence of this case. In fact, I believe, the proof will show that from time to time, Mr. Barney attempted to ingratiate himself under his belief not on Mr. Hasenstab's demand, but on his belief that if he did that, sooner or later, his company would prosper. But no corrupt agreement. No thought about the mails. No thought about the telephones, no agreement or concept of defrauding Pan Am. And in fact, although Mr. Barney may testify otherwise, we hope to show you that during the course of the years that Mr. Barney not as a salesman for Tabulating Forms, his own company, as his company did business, he was under the impression that Mr. Hasenstab controlled the bulk of that business. But we are going to show you I think, from the documents which we believe the government has in its possession, that in fact Mr. Barney's business was not directed to that company by Mr. Hasenstab as he mistakenly believed, but that substantial volume of that business came through the office of Pan America in New Jersey at one time operated by a man named Welger.

And that a substantial portion of his business came from people other than Mr. Hasenstab although Mr. Hasenstab had a position in later years as a supervisor in the purchasing department. But you will see that the volume of business running through that purchasing department from Tabulating Forms and many other companies was just extraordinary. Pan Am of course, is a mutti-national large corporation and much of its buying went through this buying office in certain respects, and there were a number of buying agents within the company giving out and approving the orders including the orders for Mr. Barney's company. So that we hope to show you that Mr. Hasenstab himself did not have a direct connection with the business that Mr. Barney's company was getting although Mr. Barney thought that Mr. Hasenstab perhaps did have that control.

And no question gratuities were paid. But gratuities are not a violation of the mail fraud statute. And as his Honor charges you as to the elements of the mail fraud and wire fraud statutes and the conspiracy statute, conspiracy to violate the mail and telephone fraud statute, you will see the requirements of intent, knowledge and wilfulness to violate those laws which must be established by the government beyond a reasonable doubt before there can be a conviction. We are going to show in this case that Mr. Barney's business did indeed grow not through the action of Mr. Hasenstab in favoring Mr. Barney, but in large measure in the recent years which I think will probably become more prominent as an issue in this case, because there was something called an open contract where Mr. Barney's company had bid competitively with other suppliers and been awarded the bid because his company was the lowest bid in a number of instances and the New Jersey installationunder the direction of a Mr. Welger continued to order those forms under what was called an open contract. Ordering those forms on a repeat order that may not ever have even crossed Mr. Hasenstab's desk.

Perhaps unbeknownst to Mr. Barney. That is unbeknownst to him the fact that they never crossed Mr. Hasenstab's desk.

We are going to show you I think, that notwithstanding any taped conversation which has been alluded to, and where remarks of Mr. Hasenstab were indeed designed to get Mr. Barney to give him the gratuity, in fact, that even in and about the time that moneys were paid, Mr. Hasenstab had no control of the business that Mr. Barney's company Tabulating Forms was getting and that in fact, when orders did cross Mr. Hasenstab's desk, he saw to it that Mr. Barney and every other supplier to the company, offered his supplies at the lowest price that could be obtained on Pan American's behalf. So the issue, members of this jury, as the proof is outlined, will not be solely the acceptance of gratuities paid by Mr. Barney, to Mr. Hasenstab, but whether or not in fact a fraud within the meaning of the mail fraud statutes and conspiracy to commit mail fraud or telephone fraud, has been committed and while I do not condone or make light of Mr. Hasenstab's conduct, that of course is not the issue for you to determine as sworn jurors in this case to see whether or not a federal crime has been committed, and it is going to be upon that issue that I ultimately will ask you to render a verdict in this case.

When you listen to the evidence, please remember where the burden of proof on these issues lies. Please remember the presumption of innocence which you must have as you start out listening to the evidence in this case and we feel sure that if you listen to all the evidence, you will find out that there is no proof that the defendant knowingly or intentionally violated the mail fraud statutes.

In order to undercut perhaps the attack which will be made upon Mr. Barney on certain issues, you have heard Mr. Kingham tell you already about Mr. Barney's motive for testifying and indeed we will comment upon that through the evidence, questions and answers, and show you that he does indeed have a motive for misleading you on some of the things which he is going to say. Undoubtedly he is going to take the position that he is a poor businessman shaken down by Mr. Hasenstab which we are going to show you is not the fact and which would not be relevant on the ultimate issue, because the ultimate issue is mail fraud, telephone fraud or conspiracy to commit such a fraud. And we will show you that Mr. Barney's business grew to such extent, he has recently opened up a second plant or a new plant, and that he lives on an estate in Greenwich, Connecticut, and that indeed, to save himself he is now testifying to whatever would be required to establish the federal jurisdiction in this case as distinguished from any other immorality in the hope of walking out from the courtroom of Judge Owen's

I think I have basically outlined the defendant's position in this case. It is up to the government to show that Mr. Hasenstab defrauded Pan American, and we suggest to you that the proofs will not show that. It is up to the government to show beyond a reasonable doubt that Mr. Hasenstab intentionally, wilfully and knowingly violated the mail fraud statutes and the wire fraud statute and we suggest that will not be established and we respectfully suggest that there will not be proof beyond a reasonable doubt of a conspiracy to violate those provisions of the law.

You may think in your minds somewhat harsh of Mr. Friedman to talk about the technicalities. Well, if he took money, maybe he should have, maybe he should not have. That is not the issue. [illegible] issue is your service as jurors in this case to make a decision on the issues in the same manner as Judge Ward asked you to assure him that you would if you yourself were on trial and wanted a fair trial of the issues of mail fraud, wire fraud and conspiracy.

At the conclusion of the case, members of this jury, we are going to ask you to find Mr. Hasenstab not guilty of these specific charges.

Thank you.

THE COURT: Thank you, Mr. Friedman.

Mr. Kingham, are you ready to proceed?

MR. KINGHAM: If I may, your Honor, the governmen calls as its first witness Walter O'Toole.

WALTER O'TOOLE, called as a witness, having been duly sworn, testified as follows:

DIRECT EXAMINATION

THE COURT: One caution to Mr. O'Toole. Please keep your voice up so that everyone in the courtroom can hear you. People have hearing problems of greater or lesser moment and witnesses who are not used to testifying perhaps tend to drop their voices,so would you keep your voice up please.

THE WITNESS: Yes, sir.

BY MR. KINGHAM:

Q Mr. O'Toole, by whom are you employed at the present time?

A Pan American World Airlines.

Q How long have you been with Pan Am?

A 32 years in October of '77.

Q What is your job at Pan American, sir?

A I am the manager of purchasing.

Q How long have you been a manager for purchasing at Pan Am?

A Five years.

Q As a manager of purchasing with Pan Am, Mr. O'Toole, what in general are your duties?

A To effect purchases of goods and services related to the specific commodities that are assigned to the buying unit.

Q What kinds of commodities does your portion of the purchasing department buy?

A Printed forms, office and stationery supplies and contract services for office equipment, food, beverages, uniforms,medical supplies, subscriptions. It is a very long listing.

Q Where is your office located?

A Kennedy International Airport.

Q How long has it been at that location?

A I'm sorry?

Q How long has your office been out at the airport?

A Just about five years.

Q And before that, where were you located?

A Well, I was located at Kennedy Airport in a different work environment and building and job related function.

Q Were there purchasing offices in the Pan Am building prior to 1972?

A Yes, sir.

Q Do you know William Hasenstab?

A Yes, I do.

Q How long have you known Mr. Hasenstab?

A Approximately ten, twelve years.

Q Do you see Mr. Hasenstab in the courtroom, sir?

A Yes, I do.

Q Would you point him out?

A He is the gentleman at the second table seated in the center.

MR. FRIEDMAN: I concede he identifies Mr. Hasenstab. That is not an issue.

THE COURT: That is conceded. Very well.

Q Did you come to know Mr. Hasenstab as a fellow employee at Pan American?

A Yes.

Q When you came to know him, what was his job if you recall?

A He was purchasing as a buyer and as a purchasing supervisor.

Q Did there come a time when you and Mr. Hasenstab came to work in the same buying unit?

A Yes.

Q About when was that, sir?

A January of 1975.

Q Is that call unit 5?

A That is correct.

Q What is the title or name of unit 5?

A Office and Passenger Service Support.

Q At that time, that is starting around January of 1975, what was the organizational structure of that unit? What types of employees?

A Consisted of a manager.

Q Was that yourself?

A That's correct. Supervisor.

Q Was that Mr. Hasenstab?

A Yes, 11 buyers, one expediter and one order clerk.

Q What was Mr. Hasenstab's general duties if you know as a supervisor in that buying unit?

A He was responsible for the supervision of the unit, he was responsible for the unit in my absence. Specifically, he was specialist in printed forms and support to the user departments who were users of the form. He supported the user requirements in developing their needs based on his experience. He maintained a -- he oversaw the services related to office machines, copier machines and products. He maintained a check fund for the payment of direct purchases in our immediate environment.

Q Are you familiar, Mr. O'Toole, with the system used at Pan American for the requisitioning and purchase of the types of commodities that you deal with?

A Yes.

Q Specifically,are you familiar and have you become familiar with the system used for the requisitioning and purchase of printed forms?

A Yes.

Q Can you in as simple terms as possible explain to the ladies and gentlemen of the jury what that system is?

A In the purchasing department we received requisitions from our worldwide locations on all continents of the globe and the purpose the requisitions are received in a controlled environment and the specific requisitions are issued or allocated to specific buying units based on the commodities that they purchase.

Q Mr. O'Toole, by requisition, is that a request which some portion of the company has for an order for printed forms?

A It is a request to purchase.

Q What happens when the request to purchase comes to the buying unit of which you are the manager?

A When the requisition is received within the buying unit from another entity within the work department, the requisitions are reviewed by the manager to make a determination that they appropriately belonged there and highlight any requisitions that might need preferential treatment over others and then refer them to a buyer for reallocation to the individual buyers who purchase by commodity.

Q With respect to printed forms, in your connection with unit 5, who has been the buyer who generally works with printed forms?

A A Mr. Di Napoli.

Q Is that Nick Di Napoli?

A That is correct.

Q What does the buyer do?

A The buyer receives the request and he takes the appropriate action to solicit quotations, bids, pricing of the item, and based on certain criteria, then the requisition is committed to purchase based on the vendor's selection.

Q What happens after the buyer selects a vendor? What does he do then?

A He is required to complete certain basic information on the requisition form to prepare it for purchase order preparation and then releases it to the supervisor.

Q Is the purchase order the document which contains all the provisions of the agreement between Pan Am and the vendor?

A Yes.

Q What is the supervisor's function with respect to the documents you just mentioned?

A He is to review the -- review and edit and approve the requisition prior to taking purchase action.

Q Mr. O'Toole, let me show you what I marked as Government's Exhibit 1 for identification.

Do you recognize that chart, sir?

A Yes, I do.

Q Did you have something to do with its preparation?

A Yes, I did.

Q Did you furnish the information that found its way on to this chart?

A Yes.

Q Is this chart a fair illustration of the system that you have just described for purchasing printed forms at Pan American in your unit?

A Yes.

Q Would the use of this chart assist you in explaining that system graphically to the ladies and gentlemen of the jury?

A Yes.

MR. KINGHAM: Your Honor, Government's Exhibit 1 for identification is offered as Government's Exhibit 1 for purposes of illustration.

THE COURT: For the purpose of illustration , would you show it to counsel before it is shown to the jury?

As I understand it, this is to illustrate the witness' testimony.

MR. KINGHAM: That is correct, your Honor.

(Pause.)

MR. FRIEDMAN: May I have a voir dire on a certain portion of this chart?

THE COURT: You may.

Ladies and gentlemen, a voir dire, which you heard me describe during the empaneling of the jury and a voir dire as has been requested by Mr. Friedman, is a brief examinatio to determine whether or not counsel wishes to either object or to ask for some modification so far as an exhibit is concerned.

You may proceed, sir.

MR. FRIEDMAN: Thank you. May I use this chart so that I can pose a question, please?

THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MR. FRIEDMAN:

Q Mr. O'Toole, I would like to direct your attention to your testimony as it applies to that portion of the government's proposed exhibit which is marked "Supervisor Hasenstab Review Buyer's Work. . Process purchase order for ultimate purchase by Pan Am."

A Yes, sir.

Q Wouldn't it be true to state, sir, that the use o the word "review" means that Mr. Hasenstab or someone who occupied that position, would have as one of his functions to check the physical mathematical accuracy of the content of these orders and to check the physical accuracy of the person designated as the vendor, the seller to Pan Am and like materials of that type?

A When you say physical, sir, you mean just to --

Q That is, to look at the documents, to make sure the arithmetic was correct, that is part of what is meant by review, isn't that right?

A In certain cases, that would be true, sir.

Q And in certain cases, he was to make sure as to other items of accuracy, in terms of those documents, by the use of whatever other forms had been utilized in correcting the order concerned, isn't that right?

A Based on the information that is at his disposal, yes.

Q And as a matter of fact, you, during the course of your period of time as manager, also performed such a function; isn't that true?

A That is correct, sir.

Q And isn't it true that under the word "review," there is not the intent or the meaning that Mr. Hasenstab's discretion was utilized in determining the quantity, some other agency or section of Pan Am had requested be ordered; isn't that right?

A Could you repeat the question?

Q Yes, I'm sorry. You will have to forgive me if my lack of familiarity with your business does not permit me to readily verbalize the question.

Isn't it true that the word "review" did not encompass a discretion reposed in Mr. Hasenstab as to the quality of the goods,to review the quality that was in the order?

A Well, if I can say it in the sense of an opinion, I would think that irrespective of who was doing it, we have a responsibility to make certain that the development of the requisition purchase order package supports our company's requirements.

Q But he wouldn't have the discretion to say, "Use ten weight paper instead of twenty weight paper" and that so of thing, in that order, isn't that true? In that review; isn't that true?

A If the portion of the requirement is for the selected vendor or anybody quoting to meet the specification and if the specification as to weight paper, quality, fabric color is indicative, then we should be purchasing the item a requested.

Q That is somebody in the company other than you or Mr. Hasenstab makes out a request for the purchase of certain material and that person in the company who makes up the requisition under whatever procedures are employed by the company, ultimately sends into the Purchasing Department, through its many passages over the varying desks, a specification of what he wants the company to buy in terms of quantity, qualities and prices as I believe you have indicated; is that right?

A On the first two, yes. On the last two, not necessarily, sir.

Q Only sometimes so?

A There are prices that can be annotated based on prior knowledge of experience.

Q Prices annotated by whom? I don't know what the term "annotated" means.

A Annotated means that it is so indicated on the document.

Q That is, the document that would come into your office would have written on it a price reference put on it by someone outside of your office and that price would be the price that is referred to for the placement of the order?

A The answer in fact would be no, with an explanatio

If the price was -- in order to process a request, the user department, irrespective of whether they are -- or the approving authority whose making the request, has to have some knowledge as to what kind of a commitment they are making.

Therefore, they have to have some understanding before the fact as to what kind of a volume order or request they are entering into.

In some cases, the prices are put based on past experience; what market conditions might be; or it may be from a published listing or catalogue that is a matter of record.

Q But that pricing just so that we will be very clear in terms of the word "review," that pricing is done by the requisitioning office?

A No, sir. The price that we are talking about in the review is the price that was selected at the buyer level in developing his quotating and pricing it based on information of record. It is the buyer's responsibility to indicate the price irrespective of what the price was that may have been shown on the requisition.

Time and circumstances change and the price is a current market price based on soliciting of the price or published.

Q Are you saying that it is the buyer who sets the price on that requisition?

A It is the buyer who indicates the price based on the information that is used to develop the information.

Q Since I am asking you relatively few questions on this issue, I am going to pass on for a moment just with this question:

Would it be true then, sir, that the word "review" of the buyer's work does not of necessity mean that the person in Mr. Hasenstab's position set the price or the terms or the quantity of the transaction concerned?

A No, it doesn't necessarily mean that, sir.

Q In fact, I think you have indicated that you -- withdrawn.

Would it be true that would you review on occasion buyer's work?

A That's correct.

Q And before any supervisor such as Mr. Hasenstab received this documentation, it should flow or should have flown through you?

A No, sir. No, if you are pointing to the buyer, that is not correct.

I am up above, I am the first step on the chart where it says --

Q I'm sorry, I misinterpreted it. That is, it comes to you first, you review it, take whatever action you take and then you send it out to the buyer and then it goes out for some further checking?

A That's correct, sir.

MR. KINGHAM: Your Honor, I object to any further voir dire as to the accuracy of the exhibit.

MR. FRIEDMAN: I have no objection as to the accuracy of the exhibit, reserving, however, what I think is a fair right to cross examine on the scope of the duties encompassed by the word "review" as on cross examination.

THE COURT: The exhibit is received and will be considered by the jury for illustrative purposes. That is, it is presented to assist you in understanding the testimony as it is given from the stand and the evidence as it is presented.

MR. KINGHAM: Your Honor, I think that I can hold this next to Mr. O'Toole and thereby allow all the jurors to see it as he explains it. It might be easier than the easel, which I have found is a bit low.

THE COURT: You may do that then.

MR. KINGHAM: Thank you.

I ask first of all, whether all the ladies and gentlemen of the jury can see this chart.

BY MR. KINGHAM:

Q Mr. O'Toole, can you explain, by using Government' Exhibit 1, the system that you have testified about and that you have described for Mr. Friedman during his brief questions?

A Requisitions are received in a controlled environment in what is referred to as the Requisition Unit. All requisitions.

They are allocated to buying units based on the commodities that the individual buying units purchase.

Following the chart, the requisitions for printed forms as received from the user department as in the case of all requisitions, are directed and received by the manager. They are reviewed to make a determination that they appropriately belong there and the manager can take whatever action he considers appropriate to highlight or provide some priority to requisitions or reject requisitions which ar incorrectly referred.

THE COURT: Keep your voice up, please. It is difficult for the jurors who are farthest from you to hear you.

A (Continuing) Once the manager has completed his cursory review, they are referred to a buyer who has been given the responsibility to distribute the requisitions or allocate the work out to his fellow buyers based on the commodities that they purchase.

Each of them have certain specialities based on the commodities I spoke of as to uniforms, food, beverages, identification, subscriptions, etc. The buyer allocates the work in accordance with that distribution.

On receipt of the requisition by the individual buyers, they take the appropriate action to obtain price quotation information from the vendors of record or those that have the capability to meet our requirements. They prepare a quote sheet, they make a vendor selection and they prepare a draft purchase order to consummate the purchase and release it in turn to the supervisor.

The purchase requisition which was in a requisition format, is reviewed by the supervisor or whoever is in the position at the particular time, edits and releases it for purchase through the company's processes of order typing, printing and further processing.

Q Mr. O'Toole, in your experience, does this system always work the way it is set out on this chart?

A [illegible], sir.

Q What types of exceptions are there?

A In the absence of myself or the supervisor, one or the other, and I am referring to vacation, illness or away on company business, then the manager or the supervisor have to take on the dual function. He would have to take on this function and I would have to take on his function as described here.

In addition, the assignment to Mr. Di Napoli in distributing the requisitions would have to be accomplished in his absence by another assigned buyer.

Q Mr. DiNapoli is the buyer who specializes in printed forms; is that correct?

A Yes, sir.

Q Is it always the responsibility of the buyer to obtain the price quotation information?

A Yes.

Q Mr. O'Toole, are you familiar with the general criteria for selecting the vendor, the person who is going to sell the goods tothe company?

A Yes.

Q What are those, sir?

A One would be price, one would be the selected vendor's ability to meet our specifications requirement, and a third would be the availability of the product or services as far as our delivery requirement, and the fourth would be service.

Q Let me show you, if I may, sir, what has been marked Government's Exhibit 2 for identification, and I would ask you if you would look at that and tell us what it is.

A This is the purchase order for Pan American World Airways, Inc.

Q For what type of commodity?

A For a printed form.

Q What is the date of that purchase order?

A August 24, 1976.

Q What is the company to whom that purchase order is directed?

A Tabulating Forms, Inc.

Q Are there any other papers or pieces of paper attached to that requisition form, sir?

A Excuse me, to the purchase order?

Q To the purchase order, I'm sorry.

A In addition to the purchase order, there is a requisition form, there is a quotation form and a quotation from the vendor, a vendor quotation form.

Q From Tabulating Forms?

A That's correct.

Q Do you recognize any of the handwriting or initials on any of those documents, sir?

A Well, on the requisition form, there is writing of Mr. Nicholas DiNapoli; Mr. Hasenstab, Mr. J. A. Anderson.

Q Who is Mr. Anderson?

A Mr. Anderson is the director of administration of Data Systems Management or the user department.

THE COURT: At Pan Am?

THE WITNESS: At Pan Am, sir.

Q Those would be the people requesting the type of forms that are going to be ordered, is that correct?

A In this particular --

Q In that case.

A Yes, sir. In addition, there is initials and abbreviated name of Mr. DiNapoli and Mr. Hasenstab. I am not familiar with signatures.

Q How about the quotation sheet; do you recognize the handwriting on that, sir?

A Yes.

Q Whose is that?

A Mr. DiNapoli.

Q During the course of your association with Mr. Hasenstab and Mr. DiNapoli, have you become familiar with their signatures and their initials?

A Yes.

Q How many times a week would you say you have seen their signature or initials?

A A dozen or more times at least.

Q Are the purchase order requisition forms, quotation sheets and documents of that sort, documents which are maintained in the regular course of business of Pan American World Airways?

A Yes.

Q Is it the regular course of business of Pan American to make and maintain and prepare those documents in connection with purchases of printed forms in the regular course of business?

MR. FRIEDMAN: I will concede it is a record that is admissible.

THE COURT: There is no objection?

MR. FRIEDMAN: No objection, Judge on admissibility. I would like to see it first.

THE COURT: Of course.

The document is offered in evidence. It will be shown to Mr. Friedman.

MR. FRIEDMAN: Thank you.

THE COURT: It might be a good point for us to take our mid-morning recess. We will take ten minutes, ladies and gentlemen.

Please, do not discuss the case among yourselves, keep an open mind on all facets of the case until the case has been concluded and given to you following my charge.

We will resume in approximately ten minutes and proceed to some convenient point between 1 and 1:30 p.m., and will then recess for the day.

The jury is excused for a ten-minute recess.

(Recess.)

(In open court - jury present.)

THE COURT: You may proceed, Mr. Kingham.

MR. KINGHAM: Thank you, your Honor.

THE COURT: I think the last order of business had been that counsel was reviewing the exhibit which had been proposed and I gather you have completed that, Mr. Friedman, and there is no objection?

MR. FRIEDMAN: That is correct, sir.

THE COURT: Number 2 is received.

(Government's Exhibit 2 was received in evidence.)

BY MR. KINGHAM:

Q Mr. O'Toole, calling your attention to Government's Exhibit 2 now in evidence, if I may, the first page is the purchase order; is that correct?

A Yes.

Q And the second page is the requisition form?

A That's correct.

Q The third page is the quotation sheet?

A Yes.

Q And the fourth is the written quotation from Tabulated Forms; is that correct?

A Yes.

Q Can you explain how these forms fit into the system that you have described for the jury?

A The first document is the requisition. It is a request from a user department throughout Pan Am's system to request for purchase a particular commodity.

The user department prepares and submits the requisition to the Materiel and Logistics Department of which purchasing is part of that group.

Would you repeat the question, please?

Q What happens to it after it gets to your unit, the requisition form?

A The requisition form after it passes through the steps that were indicated on the chart previously is received by the respective buyer for that particular commodity. He reviews it based upon past experience, item history, and makes a determination for processing or vendor quote selection.

Q Who was the buyer who processed that requisition form?

A Mr. DiNapoli.

Q Are his initials on the back of that, or his name Nick?

A Nick, yes.

On receipt of the requisition that we have previously discussed in this particular instance, Mr. DiNapoli indicated the application to himself and indicated the date of his receipt for action.

The second step, or the second phase, was the record of telephone quotation sheets, record of telephone quotation sheets which is a history of the vendor's companies who were solicited and the prices that were received verbally from those respective companies for the item to be purchased.

MR. FRIEDMAN: Excuse me, we can't see that sheet here; could we just ask the witness to hold it up?

THE COURT: Do you have it?

MR. FRIEDMAN: Yes, I think so, Judge.

THE COURT: Fine. What he called the "quote sheet," is a long column, narrow sheet.

Q What are the three companies whose bids are reflected on the quote sheet that you have before you?

A Tabulating STock Forms, Inc., Printhouse and Moore Business Forms.

Q Those are three firms in the printed forms business; is that correct?

A That's correct.

Q Which of the three has the lowest recorded bid?

A Tabulated Forms, Inc.

Q What happens to the requisition form and the quotation sheet after Mr. DiNapoli prepares them?

A After the forms as you indicated are prepared, the are submitted to the supervisor for the indicated review and editing prior to converting the requisition form into a purchase order form.

Q Is there reflected on those documents any indication that Mr. Hasenstab received those forms?

A Yes.

Q What is that, sir?

A His initial appears on the reverse side of the requisition form as having reviewed it.

MR. KINGHAM: Your Honor, if I may take a minute to pass this through the jury so the ladies and gentlemen can see what Mr. O'Toole has been talking about.

THE COURT: Yes.

MR. KINGHAM: Thank you.

THE COURT: Do you have any copies of that?

MR. KINGHAM: I'm afraid we have not, your Honor.

THE COURT: Then we will be patient.

MR. KINGHAM: Thank you.

THE COURT: Ladies and gentlemen, I think this would be a good time to indicate to you that at the time you go in to deliberate on this case, you may request that I send in to you any or all of the documents received in evidence. I will comply with your request at that time so that you may have whatever you wish before you in the jury room while you are deliberating.

Sometimes jurors, when they are asked to look at a document decide, "This is the first and probably the only time I will ever have an opportunity to see it, and therefore I had better memorize every line."

So, I want you to read the document to your own satisfaction, I do want you to read it with the view that you will have access to it during the course of your deliberations.

(Pause.)

Q Mr. O'Toole, in the course of your duties as the manager of Unit 5, have you become familiar with an annual award or annual contract which Pan American has for the purchase of stock computer paper?

A Yes.

Q Do you know, sir, during 1975, what company had th award on that annual contract?

A Moore Business Forms.

THE COURT: Moore Business Forms?

THE WITNESS: Moore Business Forms.

Q What type of documentation would an annual award such as that have to support it?

A It has to be supported by a purchase order.

Q There would be an initial purchase order; is that correct?

A That's correct.

Q How long would such a purchase order be good for?

A Generally it would be for a year.

Q And what in your experience and under Pan Am's policies, happens at the end of that year with respect to the contract?

A The order would expire and have to be reissued based on user department requirements.

Q Would there be a re-bidding of the award?

A Yes.

Q To your knowledge, was the 1975 contract for stock computer paper re-bid for 1976?

A No.

Q Do you know what company had that contract in 1976?

A Tabulating Stock Forms, Inc.

Q Let me show you, if I may, Mr. O'Toole, what have been marked Government's Exhibits 3, 4 and 5 for identification.

Would you look at those and tell the ladies and gentlemen of the jury what they are?

MR. FRIEDMAN: I object to that question, Judge, not in evidence and I think I should be entitled to look at them.

THE COURT: Do you recognize those documents, sir?

THE WITNESS: Yes.

Q What are they?

MR. FRIEDMAN: I object to his testifying as to what they are at this moment.

MR. KINGHAM: Judge, I believe in order to lay a foundation the document has to be identified. The witness says he recognizes them.

THE COURT: Yes, I think that is the predicate question, Mr. Friedman;

And if you recognize them, would you tell us what they are?

THE WITNESS: They are a statement of policy of Pan American World Airways regarding confidential interest.

Q Do you recognize any writing on those documents?

MR. FRIEDMAN: If your Honor please, may I ask for an offer of proof on these issues out of the presence of the jury?

THE COURT: I don't see it to be appropriate. I will let the next question be answered with a yes or no.

Q Do you recognize any writing on those documents?

A Yes.

Q Whose writing is on those documents?

A Mr. Hasenstab's.

MR. KINGHAM: Your Honor, Government's Exhibits 3, 4 and 5 for identification are offered in evidence as Government's Exhibits 3, 4 and 5, respectively.

THE COURT: Show them to counsel.

MR. FRIEDMAN: I have seen them already, if your Honor please, and I think at this time I must ask for your Honor to indulge us with a brief side bar conference on admissibility of these documents.

THE COURT: Very well.

(At the side bar.)

MR. FRIEDMAN: If the Court please, I have been furnished with a photostatic copy of these documents prior to trial. I note that two of the documents are different in their print content from the third. The one document which is referrable to the year 1971, has language in it in which the acknowledging party signs his name under typed print stating, and I now quote, "I know of no interest or relationship of mine or of my wife," etc.

The other two documents which refer to the years 1974 and 1976, are printed differently and in the same paragraph which I have just called to your Honor's attention, I believe that there is no statement such as "I know of no interest of mine," but rather, there is a statement, "I know of no interest or relationship or of my spouse," the words "of mine" are omitted from such statement. The same is true as to the 1974 document and that becomes at this poin the point of my request for an offer of proof as to these documents, at least as to 1974 or 1976.

THE COURT: I gather the 1974 and 1976 documents which are marked Government's Exhibit 4 for identification and Government's Exhibit 5 for identification, respectively, are the same?

MR. FRIEDMAN: That is correct, sir, that is my reading of them.

THE COURT: All right. Let me have an opportunity since they contain two pages of writing.

(Pause.)

THE COURT: I think you have to read the two documents together and I would note on the front page of both 4 and 5 for identification, under the title "Statement Of Policy" 4. In other words, it indicates as a predicate that employees should avoid certain things. And 4 reads: "Where the individual solicits or accepts," and then I will skip -- "any personal benefit from any person engaged in business with the company or from a competitor."

You have to take that language, which appears on the front page with the language which you mentioned on the back where you felt that there was a -- in some way an omission or possibly a limitation contained on the reverse side.

Then you continue on the reverse side where I think the first paragraph makes clear that there is a continuing obligation upon employees with respect to actual or potential conflicts of interest. And if you take the document as a whole, if your point is that you find some ambiguit in the document, I frankly do not see it.

If you have another point, since you asked for an offer of proof, perhaps you can articulate it and I would tu to Mr. Kingham.

MR. FRIEDMAN: Thank you, Judge. I do find an ambiguity, but I agree with your Honor. Of course, I object on the basis of this ambiguity to two of these exhibits coming into evidence. To me, the existence or the non-existence of such a statement is immaterial on the issue of mail fraud or telephone fraud counts. There is no relationship which has been shown of these documents to a mail fraud and reliance by the company or conpsiracy to violate the mail fraud statutes.

THE COURT: The problem with the argument is that knowledge and intent are elements as I recall it under all three of the counts in this particular indictment. I would think that the purpose of this offer is to bear on and assist in proving an absence of mistake and the defendant's knowledge and intent to commit the crimes charged in the indictment. If I have misstated the offer or the intent of the offer of these exhibits, Mr. Kingham, I suggest that you correct me.

MR. KINGHAM: That is it precisely, your Honor.

MR. FRIEDMAN: I feel if your Honor please, that though they may be offered for the purpose of intent, there is no relevance to the intent in reference to mail fraud.

MR. KINGHAM: But there is as to an intent to defraud, your Honor.

THE COURT: You see, I would suggest that you might reconsider the position that you have taken with regard to the requisite intent to support a conviction on charges of mail fraud.

The intent, as I understand the law, comes in the doing of the act. The fact that that was later followed up by a mailing is all that it takes to bring it within the ambit, for example, of 1341. My own thought is that one does not of necessity have to intend before doing the act that he is going to mail something. The incidental mailing of a document as I understand the law, will support the charge.

Mr. Kingham, you undoubtedly have researched the subject more recently than I. If you would like to express yourself on this point, I suggest this is the time to do so.

MR. KINGHAM: I agree, your Honor.

It is in the government's requests in virtually that language. My understanding of the law is exactly that and prior to trial, of course, we had furnished counsel with a copy of our requests sc counsel knows our view of the law in any event.

MR. FRIEDMAN: We intend, if your Honor please, to submit our requests to charge, principal requests on this issue will be ready for submission by this afternoon or first thing in the morning. We rely upon United States vs. Maze, principally, which I understand to at least some extent resolved the conflict between various circuits as to the use of the mail requirement to give the federal government jurisdiction, and that was, I believe, the first case of the United States Supreme Court dealing with this issue where the language was used in commenting upon the Periera case; was that the mailing must play a significant part in the scheme and the mailing must be for the purpose of the scheme and it hardly seems to me that that opinion indicates that the mailing can be incidental as such without there being a requisite intent on the part of the defendant. And while we may disagree, that of course is the position that the defense takes in this case.

THE COURT: You are entitled to take your position

MR. FRIEDMAN: Because otherwise, you can readily see that the ambit of control which the federal government would have over the lives of our citizens by virtue of the use of the telephone or by the mail would be so great as to permit the enforcement of every garden variety larceny to be the subject of federal jurisdiction, which I am certain is not the intent of Congress.

THE COURT: The only problem with your defense here is the factual context in which I view this case. The business activities here in my judgment just from what I have heard so far, could not, I suggest, be carried out without the use of the mails.

It isn't just an incidental situation and I think that I am going to have to let the proof develop on that, but I do not see if what you are saying is that there was possibly one isolated mailing here and that is what the government is relying upon and that is it, I have a feeling, although the proof hasn't developed it yet, that these quotes frequently come in in the mail, the requisitions may or may not come from the farflung branches of Pan Am in the mail. They may come in special pouches. I don't know yet. But it does seem to me that when one places orders, sends out purchase orders, ultimately receives in merchandise and pays for it by check, the ordinary course of business would contemplate using the mails on a fairly regular basis.

That does not mean I accept as factual what I have said so far. It is up to the government to prove the course of business dealings here. But I do suggest that at this point, anyway, when you are asking for an offer of proof on these particular documents, I think there is relevance here on the issue of knowledge and intent, and ther for if you wish to object on the basis of relevance, then I am prepared to rule.

MR. FRIEDMAN: I do make that objection as well as an objection as to the contents themselves and what I have called and pointed out to your Honor as to the discrepancy between the two documents.

But before we leave this issue and your Honor makes the ruling, I would like your Honor to clearly understand the position that I take is that my understanding of Maze is that use of the mails must be for the purpose of carrying out the scheme. Use of the mails may not be for some other purpose and it must have as in the decision of the Maze case, specifically directed purpose whereby one obtains a document or something in connection with the scheme as distinguished from something that is incidental.

T3B

THE COURT: If you intend to limit the statute to classic mail fraud cases then I think that you have misunderstood the intentions of the Supreme Court in Maze. I would say a single, isolated mailing might be argued by you, but if there is a course of business dealings which involves as I say, the submission of invoices and the regular sending out of checks which is the ultimate obtaining of the property which will in some way benefit one and work to the detriment of the other, if that was done in the mail, I am afraid that Maze is not going to be the answer to your problem. But on the limited objection here which is as to the relevance of these conflict of interest documents, I suggest that that objection will be overruled.

The fact that there was a discrepancy between the statements of policy and acknowledgments which were presented in different years, I think is something you may want to develop or may not want to develop either on cross-examination or on final argument, but for present purposes, the objection on the grounds of relevance is overruled.

MR. KINGHAM: Thank you, your Honor.

(In open court)

MR. KINGHAM: May Government's Exhibits 3, 4 and 5 for identification be admitted into evidence as

Exhibits 3, 4 and 5 respectively.

THE COURT: Received. The court has noted the objection of defense counsel and has overruled it. The documents may therefore be received in evidence.

(Government's Exhibits 3, 4 and 5 received in evidence.) xx

MR. KINGHAM: Your Honor, may I read selected portions from two of these exhibits to the jury so that we don't further try anybody's patience by having them passed over.

THE COURT: You may and of course the jury is remind that any documents they wish to see are upon their request be sent in to them when they go in to deliberate on the case.

You may proceed, sir.

MR. KINGHAM: Government's Exhibit 3 in evidence entitled Statement of Policy says in the fourth paragraph.

"In the judgment of the board of directors of the company and of the committee on officer and employee relationships, possible conflicting interests which might tend to influence the judgment or actions of a director, officer or employee in performing his duties for the company may arise in the following situations" and the fourth enumerated situation reads "4. Where the individual solicits or accepts or his wife, minor children or dependents residing in his household accept any personal benefit from any person engaged in business with the company, or from a competitor." Continuing "It is the responsibility of each director, officer and employee of the company to avoid placing himself in a position in which actual or potential conflict of interest may arise. If such a situation should arise, it is equally his responsibility to make known to the appropriate committee any interest or relationship which might result in such a conflict."

And the acknowledgment on the back. Or before that, I'm sorry. "Personal benefit" defined to include "any type of gift,favor or service but does not include A. normal business courtesies, customarily exchanged by persons in the regular course of business activities if they are made voluntarily without any prior agreement or understanding between the parties and there is no reasonable likelihood that they will influence the recipient' judgment or actions in performing duties for the companies." And the acknowledgment reads "I have received and have read the above statement of policy of Pan American World Airways, Inc. I know of no interest or relationship of mine or of my wife, minor children or dependants residing in my household not disclosed for consideration by the committee on officer and employee relationships which might in any way conflict with the statement of policy. If as a result of a change in the operations of the company, a change in my personal situation or otherwise a potential conflict should arise, I will either disclose the facts fully to the committee for appropriate decision or recommend with respect thereto, or I will forthwith eliminate such potential source of conflict."

Dated July 2, 1971, signed William Hasenstab. That's Government's Exhibit 3 in evidence.

Government's Exhibit 4 and 5 in evidence which I am sure counsel will agree are identical at least in their printing.

MR. FRIEDMAN: That's correct.

MR. KINGHAM: Refer to the years 1974 and 1976. I will read from Government's Exhibit 5 which is the 1976 statement and includes among the guides of certain of the mo obvious areas of sensitivity to be avoided.

"4. Where the individual solicits or accepts or the spouse, minor children or dependents residing in the household accept any personal benefit from any person engaged in business with the company or from a competitor."

The acknowledgment reads "I have read the above statement of policy of Pan American World Airways, Inc. I have no interest or relationship or of my spouse, minor children or dependents residing in my household not disclose for consideration by the auditing committee which might in any way conflict with the statement of policy. If as a result of a change in the operations of the company, a change in my personal situation or otherwise, a potential conflict should arise, I will either disclose the facts fully to the auditing committee for appropriate decision or recommend with respect thereto or I will forthwith eliminate such potential source of conflict."

Government's Exhibit 5 is dated January 30, 1976, signed William E. Hasenstab and Government's Exhibit 4 is dated August 5, 1974, and signed William E. Hasenstab.

Q Let me show you if I may, Mr. O'Toole, Government's Exhibit 6 for identification. Do you recognize that, sir?

A Yes.

Q What is it?

A Mr. Hasenstab's resignation.

Q How do you recognize it?

A I received the original copy of it when it was submitted to me.

Q Do you recognize a signature on there?

A Yes.

Q Who is it, sir?

A Mr. Hasenstab's.

MR. KINGHAM: Your Honor, Government's Exhibit 6 for identification offered in evidence as Government's Exhibit 6.

MR. FRIEDMAN: I object on the grounds his resignation is not relevant to the issues in this case.

THE COURT: Overruled.

xx (Government Exhibit 6 received in evidence.)

Q On what date did you receive Mr. Hasenstab's resignation, Mr. O'Toole?

A April --

MR. FRIEDMAN: Object to this line of questioning.

THE COURT: Isn't it dated, counsel?

MR. KINGHAM: It is, your Honor.

THE COURT: The date is in evidence, if you want him to say what date he received it, you can, but doesn't the document speak for itself?

MR. KINGHAM: The document does, your Honor, but the next order of questioning relates to conversations which revolve around that date.

THE COURT: Very well. When did you receive the resignation?

A April 20, 1977.

Q Prior to that date, sir, did you have any conversations with Mr. Hasenstab concerning the conflict of interest forms?

A Yes, I did.

Q On how many occasions did you have such conversations?

A I believe it was three. I am sure it was three.

Q During what period of time?

A During the month of April, '77.

Q Where did those conversations take place?

MR. FRIEDMAN: I object to this subject to a continuing objection to this line of questioning.

THE COURT: Grounds?

MR. FRIEDMAN: Not relevant to the issues at the moment.

THE COURT: Overruled.

Q Where did these conversations occur?

A In our office.

Q Do you recall any of the conversations, sir?

A The conversations between us concerned--

Q Why don't you tell us what you said to Mr. Hasenstab and he said to you as best you recall, sir?

THE COURT: Let's try to get them in sequence.

When was the first, or approximately when?

THE WITNESS: Could be approximately the period of conversations might have taken place within a ten-day period prior to April 20th.

Q Would that mean that the first conversation took place on or about the 10th of April?

A Approximately, yes.

THE COURT: Very well.

THE WITNESS: It concerned my advising him that the statement of policy, the conflict of interest form had not been received by our audits and security people and I spoke to him requesting that he process it. Mr. Hasenstab indicated to me that he had processed it and I advised him that it had not been received by the requesting department. Mr. Hasenstab in one of these conversations indicated that he had a duplicate copy of the policy statement at home and he would take steps to process it. Further conversations which was on April 20th, I advised Mr. Hasenstab that there were numerous requests being placed on me and that the audits and security department had not received the form and they requested that I take the appropriate action to see that he processed the form. The discussions on that date followed and he indicated to me that he had the form in his possession and I believe my words were something to the effect then, well, let's get it, and he presented me with -- he withdrew a piece of paper from his pocket and presented his resignation to me.

Q Did you ever receive the conflict of interest form from Mr. Hasenstab for 1977?

A I am not the recipient of the form.

Q But did you ever receive it?

A No.

MR. KINGHAM: Your Honor, if I may read from Government's Exhibit 6 at this time.

THE COURT: It is in evidence, you may.

MR. KINGHAM: Thank you.

Pan Am memorandums reads "To manager office and passenger service support material and logistics department JFK213."

Q Is that the building where your office is?

A Yes.

MR. KINGHAM: "From supervisor officer and passenger service support material and logistics JFK213. Date April 20, 1977, subject: resignation. I hereby tender my resignation effective May 5, 1977. Signed William Hasenstab."

Mr. O'Toole, after you received Mr. Hasenstab's resignation, did you have any further conversation with him?

A Yes.

Q What did you say to him, what did he say to you, sir?

A I was--

THE COURT: Was this still on April 20th?

THE WITNESS: Yes, sir.

THE COURT: Very well, go ahead.

A We discussed his resignation and I asked Bill, Mr. Hasenstab what it was about and he indicated that he had been considering making a change for a period of time and that he had various opportunities and offers and was desirous of leaving and taking appropriate action to relocate himself.

Q Are you familiar with an audit which was conducted in your section in 1977?

A Yes.

Q Was that by the audit and security office?

A Internal audit is part of that group, yes.

Q And during what period of time was that audit conducted, sir?

A Commencing the end of January, 1977, through the end of April, early May, '77.

Q Was Mr. Hasenstab working in your section during the period of that audit?

A Yes.

MR. KINGHAM: I have no further questions, your Hon

THE COURT: You may inquire, counsel.

CROSS-EXAMINATION

BY MR. FRIEDMAN:

Q Mr. O'Toole, in the course of your testimony, you have made reference to a particular purchase order of the date I believe 8/24/76, which is Government's Exhibit 2, is that correct?

A Yes.

MR. FRIEDMAN: May I have that exhibit, please?

Q I would like to go over for a few moments that exhibit with you. Would you say, sir, that this exhibit is illustrative of all the transactions that went through your department?

A In general terms, yes.

Q That is, the forms used in general terms as they appear in Exhibit 2 were the forms used generally for orders at least in respect to certain types of paper products

A Yes.

Q On the first page of Government's Exhibit 2, there is a typewritten line at the bottom which reads "10 percent overrun acceptable" and then some abbreviations which I cannot interpret. Will you advise us what those abbreviations are, please?

May I stand here, Judge, while I show this to the witness?

THE COURT: Yes.

A The 10 percent overrun indicates that due to the nature of the item which is paper products or printed form, it provides the selected vendor the opportunity because of the nature of the commodity to exceed the order requirement by 10 percent.

Q The abbreviation INV after the word acceptable, I read the whole line now, sir, "10 percent overrun acceptable INV." What does INV mean?

A October. There are two different areas. The second area is invoice approval director administration DSM meaning data systems management, RKO meaning Rockleigh, New Jersey.

Q In reference to that indication on the foot of this form, the director of administration of data --

A Systems management.

Q Data systems management, was located in New Jersey and not here in New York, is that correct?

A That's correct, sir.

Q It would be the director of administration of data system management who would have indicated on this form, the first of Government's Exhibit 2, that the 10 percent overrun would be acceptable on the order, is that correct?

A Not necessarily, sir, unless if it is a carryover from -- in this instance, yes.

Q When you say in this instance yes, I am correct then, in stating that at least so far as this exhibit is concerned, such approval for a 10 percent overrun or the acceptability as a standard of the 10 percent overrun came from New Jersey, is that right?

A That's correct.

Q Did not come from you, from Mr. Hasenstab or from the purchasing department, rather a determination made by others in New Jersey?

A That's correct.

Q And Rockleigh, New Jersey, is one of the particular facilities of Pan Am which were in operation during this time and as a matter of fact is in operation today, is that correct?

A That's correct.

Q This particular time, the first of Government's Exhibit 2, does it have a name or a designation by which we can commonly refer to it so there will be no confusion as to the description of the document?

A This is a purchase order.

Q And this purchase order is gray in color, is that right?

A That's correct.

Q Would I be correct in stating that a purchase order when prepared, would be made up in three copies, one white, one gray and I believe one blue?

A There are additional copies, each transaction carries different number of copies and colors of copies.

Q Is gray an original of the order?

A No, sir.

Q Gray represents one of the copies then, is that correct?

A That's correct.

Q And I take it there were procedures within Pan Am to send various copies of this purchase order to different agencies within Pan Am and perhaps to the seller or vendor of the goods to Pan Am, is that correct?

A That's correct.

Q This purchase order is prepared within the Pan Am facility, is that right?

A Yes, it is.

Q On the purchase order, this particular one, at the top of the typewritten section where the form is filled in, is there not the writing "Confirming order placed by telephone on 6/21/76 to your Mr. Barney"?

A That's correct.

Q Who would type on those words?

A The typist.

Q Where would the typist get these words from?

A She would extract it from the purchase requisition

Q On this order form on the extreme right is a box in which it is written "Please refer to N. Di Napoli/ PA" and I assume that means that Mr. Di Napoli in the purchasing department to whom you referred before?

A That's correct, sir.

Q The terms and the price are on this purchasing order, is that right?

A Yes, sir.

Q Can you determine from this purchasing order what happened to the original of the purchasing order, that is, I will call it the first -- I will withdraw that, I was going to say first copy but I can't do that.

What happened to the first page, the original of the purchasing order, do you know?

A Under normal processing?

Q Talk about this one first.

A But under normal processing.

Q Well, yes.

A Okay. The original which is the white copy and the second copy which is the blue acknowledgment copy, is mailed to the vendor.

Q Do you know in this particular instance whether or not the blue or the white were mailed to the vendor?

A I could not ascertain that, I can only assume it.

Q You don't know?

A No, sir.

Q Going to the second page of this exhibit -- incidentally, just before I go on to the second page, in reference to this particular Exhibit 2, the address of Tabulating Forms, Inc. is 115 Broadway, New York, on this form, is that right?

A 115 Broadway, New York, New York.

Q That is in Manhattan, is that correct?

A That's correct.

Q Now going to the second page, that is the requisition form that you have described, is that correct?

A Purchase requisition, yes.

Q By the way, in preparing for this trial, you have not spoken to me about this case, have you?

A No, sir.

Q But you have been interviewed by one or more representatices of the United States Government?

A That is correct.

Q And you have given them some type of a statement or statements?

A I have responded to their questions, yes.

Q And have you had an opportunity to look through documentation in connection with this case?

A Yes, sir.

Q In the requisition form, a part of Government's Exhibit 2, that requisition form is dated 6/9/76, is that right?

A Yes, sir. The 6/9/76 would be typed upon this form.

Q When or to what does this date refer?

A The date is the date of the preparation of the requisition by the user department.

T4A

Q Somewhere underneath that date 6/9/76 when the requisition was prepared by the user department, there appears to be some inked handwriting, is that correct, do you see it?

A Yes, sir.

Q And there is some inked handwriting in blue and there is some in black, is that correct?

A That's correct.

Q Do you know whose handwriting is represented by the blue ink on this requisition form?

A Mr. Di Napoli.

Q And that you are of course as indicated, familiar with his handwriting?

A Yes, sir.

Q And that blue writing indicates the name of the vendor, Tabulating Forms, Inc., 115 Broadway, New York, New York 10006 and a supplier code number, is that correct?

A That is correct, sir.

Q And there are certain shipping instructions indicated in the blue ink, is that correct?

A That indicates the point where the material would be available, the shipping point, the vendor's plant.

Q And the terms are indicated in blue ink?

A Yes, sir.

Q Then there is a notation "Please refer to" those words are printed, is that correct?

A That's correct.

Q And the handwritten notations indicate "Mr. Di Napoli 5"; is that 55 or 515? What is that writing?

A 5/5.

Q And then there is the writing 8/20/76.

A Yes, sir.

Q Well now, 5/5 would refer to what, sir?

A Excuse me, that is 515. That is buyer number.

Q Is that right, his buyer number?

A Yes.

Q Look at the documents, I don't want there to be any question.

A It says 515. I don't recall at the moment what his buyer number is. It is not transposed.

THE COURT: Did you finish your answer?

THE WITNESS: It is 515 which is an assignment of a buyer number. I did indicate that at the moment I can't recall what his buyer number is, because it is not transposed.

Q Are you certain that this, just for clarity, that this is 515 as distinguished from 5/5? If you know, that is all I am asking.

A My understanding of it is that it is 515.

Q All right. Then there is a date 8/20/76.

A Yes, sir.

Q When would this writing Mr. Di Napoli 515, 8/20/76 have been written upon this requisition form?

A When he processed the order. When he prepared the format as you have just described.

Q This ink writing would have been put on to this form after 6/9/76?

A That's correct.

Q 6/9/76 is the date that the requisition was typed?

A That is correct, sir.

Q In the same ink, is it not true that the price of these goods which are described in this requisition, that the price is written out in the same ink as is the ink of Mr. Di Napoli's name and the ink of Tabulating Forms, Inc.?

A Yes.

Q So that it would appear to you that it was Mr. Di Napoli since you are familiar with his handwriting, who wrote the price down for those goods?

A That is correct.

Q Then of course, there is typewritten material on this requisition form which describes the goods to be ordered?

A That is correct.

Q The black ink here which is written out, "Confirming order placed by telephone on 6/21/76 to you Mr. Barney." What does that language mean?

A That means that the commitment for purchase was made based on a telephone conversation as opposed to the more routine method of preparing the purchase order and mailing it to the vendor.

Q Somebody then apparently prior to 6/9/76 when the requisition was typed up, or perhaps shortly thereafter, apparently had a telephone call with Mr. Barney according to this form, in which the order was discussed or placed, is that right?

A That is correct, sir.

Q And does this form indicate who it was who had that telephone conversation with Mr. Barney?

A No.

Q Am I not correct, sir, in stating that the words "Confirming order placed by telephone on 6/21/76 to your Mr. Barney"; that is in Mr. Hasenstab's handwriting, is that right?

A That is correct.

Q And that means on this form that somehow and in some way, somebody communicated to Mr. Hasenstab the fact that this was a telephone order that had been placed by somebody?

MR. KINGHAM: Objection, your Honor.

THE COURT: Sustained. Form.

Q What does this expression "Confirming order placed by telephone on 6/21/76 to your Mr. Barney" mean to you as the manager of this department?

A In my opinion, it indicates that the order was placed by telephone to the named gentleman by Mr. Hasenstab.

Q Had you on occasion, sir, seen writing such as I have just inquired about of you, that is, had you seen expressions such as appear on that requisition form?

A In other --

Q Other orders.

A Surely.

Q You don't know, sir, whether or not from a reading of this document the order was placed by Mr. Hasenstab?

A No, I don't, sir.

Q You don't know whether it was placed by Mr. Di Napoli?

A No, I don't, sir.

Q Or anybody else in the purchasing department, isn't that true?

A No, I don't, sir.

Q So that when you say to you it means Mr. Hasenstab, you are taking a guess, isn't that right?

A No, you asked me what my opinion was.

Q Did I? Your opinion --

[illegible] I think I prefaced my remark I may be incorrect but I think that I expressed -- you indicated that it was hi

Q Handwriting.

A Handwriting, and you asked me for my opinion as to what it meant and I expressed it.

Q Have you had any conversation with any particular individual in reference to this particular writing which I am making reference to in my questioning of you?

A I think we discussed it a little earlier.

Q Have you discussed it with anyone other than me in this questioning?

A I am uncertain as to whether or not I discussed that particular line item.

Q Did you look at any documentation in reference to Pan Am's business so far as this issue is concerned, which would have any bearing upon the issue as to whether such an order was placed by as you express in your opinion, Mr. Hasenstab?

MR. KINGHAM: Objection, your Honor, as to form. Issue.

THE COURT: Sustained. If you would rephrase your question, I will permit you inquiry in this area.

Q Did you have any discussion or did you look at any documents bearing upon who it was who placed the order which is referred to on this requisition prior to your coming to court here today at any time?

A I have no recollection.

Q The requisition form comes from the user department isn't that correct?

A Yes, sir.

Q And in this case, the user department is in Rockleigh, New Jersey?

A Yes, sir.

Q Is that right?

A Yes, sir.

Q Ultimately it comes into the New York office, is that true?

A At Kennedy Airport.

Q At Kennedy?

A Yes, sir.

Q And it would have come to you, is that true?

A Not necessarily, no, sir.

Q Can you identify this requisition as having come to you?

A There is no way that I can unequivocally state that I have seen the requisition or that it came to me.

Q You have described the process by which, I think you said requisitions came to you, and then they were checked over by you, and then sent by you to the buyer?

A That is correct, sir.

Q That then, is not a process that took place on all occasions, is that true?

A No, I qualified that by saying except for absence for vacations, illness or business travel.

Q All right.

A That under normal circumstances, I would -- but I can't unequivocally state that I personally had seen this prior to the circumstances here.

Q Okay, fair enough.

A Under normal circumstances though, yes.

Q Incidentally, under normal circumstances, the volume of paper work of this type that would flow over your desk for you to check over, can you describe it in some way in terms of quantity?

A It is tremendous. In terms of this particular type of form or requisition, I would estimate a minimum of 7,500 to 10,000 pieces just that one piece of paper.

THE COURT: That is a requisition?

THE WITNESS: Yes, sir.

Q When you say 10,000 pieces, are you talking about a week, a month, a year?

A I am talking on a year's time. In that form.

Q This form has upon it underneath the typewriting, some material which is stricken out by a pen. Can you read what it says there?

A I make it out as reading "Old DPC" the initials "DPC, PO" meaning purchase order, his numeric number is S as in sugar, 38457.

Q What would those words "Old DPC" mean?

A It would be a reference to a prior order for the same commodity presumably. In other words, that it would be more than likely the last purchase order reference used for the purchase of the identical item.

Q There is some other material stricken out including a date, can you read that?

A I make it out as the abbreviation for required, r-e-q-d, 9/20/76.

Q Would it be correct in stating that is stricken out in the same blue ink as is the color of the ink pricing on the paper and Mr. Di Napoli's name on the paper?

A I make it out the same way, sir, yes.

Q The approval signature -- withdrawn.

At the bottom left of the form, there is a printed word in a box which says "Approval signatures," is that correct?

A Yes, sir.

Q There is a signature there?

A Yes, sir.

Q And underneath the signature is a typewritten name, is that correct?

A Yes, sir.

Q What is the name that is signed there, if you are familiar with it and what is the typewritten name?

A The typewritten is J.A. Anderson, director administration, data systems management. The signature is John -- I believe it is an A. Anderson.

Q So that Mr. Anderson in the data services department, that is in Rockleigh, New Jersey, would have--

THE COURT: That is data systems management is that what you called it?

THE WITNESS: Yes, sir, data systems management.

Q Mr. Anderson insofar as this exhibit is concerned, would be the one who had approved this order?

A The request for purchase, yes, sir.

Q Would his signature on this form have been placed on it before or after the insertion of the price by Mr. Di Napoli?

A Before.

Q And then sooner or later, would a copy of this requisition that had been approved by Mr. Anderson be sent back to him bearing upon it the price which had been set forth by Mr. Di Napoli?

A No, sir.

Q Would a copy of this requisition with the price on it ultimately go back to Rockleigh, New Jersey, to some office there?

A No, sir.

Q You are certain of that?

A You asked about the requisition, sir. I am certain of what I stated, yes.

Q Would information as to the price go back to Rockleigh, New Jersey, on any form?

A Yes, sir.

Q On what form would that be?

A The copy of the purchase order.

Q That would be a form such as the gray one or one of the copies?

A Yes, sir.

Q So that Mr. Anderson would have knowledge of the fact and the people in Rockleigh would have knowledge of the fact of the price of these goods?

A Yes, sir.

Q Now, I direct your attention, sir, to this document which is the third page of the exhibit, which I believe is printed with the designation "Record of telephone quotations."

A Yes, sir.

Q Isn't that what it is called?

A Yes, sir.

Q On this record of telephone quotations form, there is the name, the printed word buyer, is that right?

A Yes.

Q And the buyer in this case is listed in a blue to purple ink as Di Napoli?

A Yes.

Q Isn't that correct?

A Yes.

Q And below that, there is a description of the product itself with prices, is that true?

A Yes, sir.

Q And in the upper right-hand corner, there is a series -- I withdraw that. There are a series of boxes under the printed word vendor, is that right?

A Yes.

Q And the word vendor refers to the people who sell to Pan Am the product concerned, isn't that right?

A That is correct.

Q And in this particular record of telephone quotations, do you recognize the handwriting as being that of Mr. di Napoli?

A Yes.

Q So that in fact, the telephone quotations which are listed on this portion of the exhibit, were at least written out by Mr. Di Napoli if not in fact obtained by him?

MR. KINGHAM: Objection to the last part of the question.

THE COURT: Sustained. Two questions in one. Would you rephrase the question or questions please.

Q Is it not a fact that this form would indicate that the telephone quotations were obtained by Mr. Di Napoli?

MR. KINGHAM: Objection.

THE COURT: Sustained.

A The telephone quotations?

THE COURT: No. I have sustained an objection. Counsel is going to have to rephrase his question.

Q There is no question in your mind that the handwriting in ink on this form is Mr. Di Napoli's, is that right?

A That is correct.

Q And there is no question that he made out this form, is that correct?

A That's correct.

Q Would it be the usual course of business for Mr. Di Napoli to write out the quotations that he received in reference to some telephoning that he had done for bids on a product?

A Yes.

Q That is he would make the calls, get the bids and then write out the amounts that he had received as bids, isn't that right?

A That's right.

Q And in this case, the vendors who are listed are set forth by abbreviation, I think you have indicated one is T.A.B. for Tabulating?

A Yes, sir.

Q And is P, is that PRT? I can't read that.

A It is pretty tough to read. It is Printhouse.

Q Printhouse. Maybe PTH?

A That's correct.

Q Printhouse and the other is Moore?

A That is correct.

Q The one for Tabulating is the lowest bid that is indicated on the form, isn't that right?

A That is correct.

Q So in view of your testimony, sir, that this handwriting on this telephone quotation sheet is in Mr. Di Napoli's handwriting, and that it was the usual course of practice for the individual getting the telephone bid to write out in his handwriting the sheet, the bid,would you care to change your answer as to your opinion as to the statement that the expression confirming order placed by telephone on 6/21/76 to your Mr. Barney, you said before it was in your opinion that it was Mr. Hasenstab. Would you care to alter that opinion now, sir, in view of what you have just testified to in reference to Mr. DiNapoli's signature?

MR. KINGHAM: Objection, your Honor.

THE COURT: Sustained. Form.

Q Would your answer in reference to that particular question, sir, be the same if I asked it to you again in view of your testimony just given about the handwriting and the keeping of the records of telephone quotations?

A No.

Q What is your opinion now, sir, or your answer now if I put that question to you again?

A I haven't changed my answer.

Q You are saying that your answer remains the same?

A Yes. That is the way I stipulated.

Q All right. By the way, did you discuss with Mr. Kingham before testifying here today, the details of what your testimony would be in reference to this part of Exhibit 2 called telephone quotation or record of telephone quotation?

A We discussed the purchase order.

Q Did you discuss this record of telephone quotations with Mr. Kingham, the prosecutor in this case?

A I believe we did, yes.

Q Did you discuss with Mr. Kingham anything in reference to your opinion as to who made the telephone call -- withdrawn.

Did you discuss with Mr. Kingham the question as to your opinion as to who made the telephone call placing the order for the items on this requisition, Government's 2?

A No, sir.

Q The expression confirming order placed by telephone on 6/21/76, that doesn't indicate who it was who placed the order, does it?

MR. KINGHAM: Objection, your Honor, asked and answered.

THE COURT: Sustained. In addition, the exhibit is in evidence, it speaks for itself.

Q The last form of this exhibit is entitled "Quotation Followup." Is that correct?

A That is correct.

Q On the upper right-hand corner are the large printed words or word "tab forms"; is that correct?

A That's correct.

Q Is this quotation followup form dated?

A No, sir.

Q Is this quotation followup form a normal part of some type of a file -- withdrawn.

Is some type of a file kept in reference to each order that is placed for paper products by Pan Am?

A Could you repeat the question, please, sir?

Q Yes. Do you keep some type of a purchase order file for each order that is placed by Pan Am?

A Yes, sir.

Q Is such a quotation followup form as you have just identified normally kept in such a file?

A Yes.

48a.m.

Q Before today, you have of course seen this quotation follow-up form; is that right?

A Yes.

Q And on the follow-up form, there is writing in ink; is that right?

A Yes.

Q And this would be a form that issues somewhere, somehow, from Mr. Barney's company, Tabulating Forms, Inc.?

A Yes.

Q And over in some way to Pan Am?

A That is correct.

Q In reference to this Government's Exhibit 2, which I believe you have indicated by your testimony is illustrative of the ordering and billing processes which was utilized at least in reference to Tabulating Forms, this is in fact typical of the type of order forms involved; is that right?

A I didn't hear--

Q This is typical of the type of order forms involved.

A Insofar as order processing, you used the word "invoicing." It is not appropriate. For the normal process of order placement.

Q During the course of your preparation for this trial, had you been shown by the government other order placement files or forms relating to Tabulating Forms, Inc.?

A Yes, sir.

MR. FRIEDMAN: Do we have those here?

MR. KINGHAM: Be my guest.

MR. FRIEDMAN: Would you be good enough to assist me so I don't rummage through your files?

(Pause.)

Q Are you familiar with the location of these files in the government's file drawer here?

A Yes, I am.

MR. FRIEDMAN: Your Honor, because of the volume here, I am going to have to ask the witness to step down, if I may, to save time.

THE COURT: Very well.

Q Can you please approach this table and take the forms or the orders for 1976 and identify them for me?

(Pause.)

A You said for 19--

Q '76.

(Pause.)

A That would be this group here.

Q You can go back there now. Thank you.

Are these order forms in this group arranged in any particular manner, do you know, sir?

MR. KINGHAM: May we have them marked, sir?

THE COURT: Yes. That would be Defendant's Exhibit A for identification. A group of -- are they order forms, sir?

THE WITNESS: Purchase orders.

THE COURT: Purchase orders.

THE WITNESS: And related to --

THE COURT: And related documents?

THE WITNESS: Yes, sir.

THE COURT: That's the way they will be designated.

(Defendant's Exhibit A was marked for identification.)

MR. FRIEDMAN: Thank you, sir.

MR. KINGHAM: Your Honor, they appear to be loose. I have an empty file folder.

THE COURT: I think they ought to be kept in some form so that they not wander or stray.

MR. FRIEDMAN: Maybe I can mark the envelope.

THE COURT: The Court will take care of it.

MR. FRIEDMAN: All right. That will be Defendant's Exhibit A for identification.

Q Referring to Defendant's Exhibit A for identification, I ask you, sir, are these forms and documents arranged in any particular order to your knowledge?

A At the moment, I don't know if they are properly filed. They will be filed in alpha-numeric sequence by purchase order number, meaning starting with "A" and escalating to "Z" and within the alpha-designation numerically.

THE COURT: Is the alphabetizing done so far as the vendor is concerned or by the designation of the item purchased?

THE WITNESS: No, it is -- the requisition number is assigned to the user department in blocks of numbers. Some on a worldwide basis. Certain blocks of numbers are assigned to Paris, Rome, Kennedy, Rockleigh, etc., etc.

Q All these forms, sir, I take it, have to do with Tabulating Forms, Inc.?

A I can assume if they are in the folder --

Q Look at them just so there will be no mistake. I want to make reference to them.

MR. KINGHAM: We will stipulate that they do, your Honor.

THE COURT: Very well. Mr. Kingham apparently has had an opportunity to look at them before you and he has agreed that they do, so you are free to look if you wish or you can adopt what Mr. Kingham has said.

MR. FRIEDMAN: I will adopt what he has said, if your Honor please.

THE COURT: All right.

Q Would you take out the first set of documents there, please, sir, and let me have them? And is there an order number on those documents?

A Yes.

Q What is it, please?

A "S" as in sugar, 38470-0D5.

THE COURT: What you have taken out is apparently a photostatic copy of a document, is that right, sir?

THE WITNESS: Yes, sir.

THE COURT: Very well.

Q May I see that document, please?

Are there any other documents in that file which you have for identification which would relate to this order number, if you know?

A I have no way of knowing without looking, sir.

Q Okay. I am just trying to quickly retrieve these.

A I don't know.

Q Well, I want you to look, sir, at this exhibit, and can you advise the jury as to the requisition form which is one of the two documents that is a part of the exhibit, as to where this requisition originated from, who requested these orders?

MR. KINGHAM: Your Honor, I object on the ground that this exhibit is not in evidence. I will stipulate its admissibility. The admissibility of the entire file, and I request that if any documents be referred to that they be numbered sequentially Defendant's Exhibits A-1, 2, and so forth, so that we know what is going on here.

MR. FRIEDMAN: I had intended, if your Honor please, to refer to the documents by order number. If the Court wants me to adopt the government's suggestion, I will do that.

Apparently there is an order number with each document within this overall exhibit.

THE COURT: If you are going to refer to a document specifically, I would like you to mark it for identification and since the defendant uses letters in this court, I suggest if you wish to refer to this first document which the witness is holding in his hand, it be marked Defendant's Exhibit A-1 for identification.

The next point that was made is whether or not you wish to offer this document in evidence. The government indicates no objection.

MR. FRIEDMAN: Yes, I do.

THE COURT: In fact, he indicates no objection to anything in the entire folder; is that correct, Mr. Kingham?

MR. KINGHAM: That is correct, sir.

THE COURT: So my suggestion is, why don't we get the entire folder in as A, and then you can subdesignate any specific documents with numbers following "A"; is that agreeable?

MR. FRIEDMAN: It is agreeable with this exception, Judge:

I have not yet seen this file as such, and whether there are any documents which would not be of this type, I don't know, and if it appears that, then I would not want those to be in evidence unless they were part of our case.

MR. KINGHAM: Your Honor, I object to that. These documents have been available to defense counsel for the past week. Every piece of paper has been available. I object.

THE COURT: Ladies and gentlemen, you will disregard the statements of both counsel.

MR. FRIEDMAN: I am saying I don't know what is here now, Judge.

THE COURT: Look.

MR. FRIEDMAN: I am looking at it, Judge. There are over fifty documents.

THE COURT: Go ahead. Take your time and look.

MR. FRIEDMAN: All right, I will look.

(Pause.)

MR. FRIEDMAN: I have looked through the documents Judge, and most all of them are relevant to this line of questioning and I have no objection to the offer.

THE COURT: Very well.

Defendant's Exhibit A for identification, a folder containing purchase orders and related forms, is received.

(Defendant's Exhibit A was received in evidence.)

THE COURT: The Clerk will mark them in evidence, please.

Q I direct your attention, sir, to purchase order number 38470-0D5, which I now ask to have marked as Defendant's Exhibit A-1.

THE COURT: Very well, mark it as A-1, please, Mr. Guranich.

(Defendant's Exhibit A-1 was received in evidence.)

THE COURT: A-1 is received.

MR. FRIEDMAN: Thank you, sir.

Q Is it true, sir, that the requisition in A-1 was made by your Rockleigh, New Jersey plant?

A That is correct.

Q Who made that requisition?

A By name?

Q Yes.

A Mr. C. A. Pocatilla. P-o-c-a-t-i-l-l-a.

THE COURT: Thank you.

A It might be an "E" on the end of it.

Q This is a photostat as the Judge has pointed out; is that correct?

A That is correct.

Q On this requisition form, there are inked notation relating to price; is that correct?

A Yes, sir.

Q Do you recognize the handwriting in which the price is reflected or by which the price is reflected?

A Yes.

Q Whose handwriting is that?

A Mr. DiNapoli's.

Q May I have the form back, sir?

A Yes.

Q Do you have, in connection with these photostats on A-1, any information relating to bidding or no bidding on this particular transaction?

A There is no indication.

Q Did you look through this file which has been collectively marked as Defendant's Exhibit A to determine whether or not this was a bidding or a non-bidding transaction?

A The question is did I look through this folder?

Q That's correct.

A I have not looked through the folder, no, sir.

Q Can you tell us from your observation of these documents whether or not the order which is described in this document or these documents is a re-order, a new order or a continuation in some fashion of an old order or just what is its nature?

A There is no indication to the first part of your question as to whether or not it is a re-order. The indications are that it is a request for purchase which had been consummated.

Q Thank you, all right.

Your initials would not be on this photostatic copy, would they?

A No.

Q The photostatic copy here, do you know when that was made?

A No, sir.

Q Do you know where it comes from physically?

A The photostatic copy?

Q Yes, sir.

A It would come from the file unit, purchasing file unit of the Materiel and Logistics Department at Kennedy.

Q All right.

A It is on microfilm.

Q I direct your attention, sir, to purchase order number S38492-0D5, and the requisition number of the same name, which I ask to have collectively marked as Defendant's Exhibit A-2.

THE COURT: Very well. It will be marked as A-2.

(Defendant's Exhibit A-2 was received in evidence.)

THE COURT: They are already in evidence, so they are merely marked as A-2 in evidence.

Q I direct your attention to that order and ask you, is it not true that the reference on the requisition is to N.J. DiNapoli?

A That is correct.

Q At the bottom of the requisition is the typewritten expression "10 percent overrun acceptable."

A Yes.

Q And this requisition was approved by Mr. Anderson of your New Jersey facility?

A That is correct.

Q And where the blanks are on this requisition form indicating the placement of a confirming order, those words are "Confirming order placed by telephone on 7/15 to your G. Barney." Do you see that?

A Yes, I do.

Q That is in typewriting, is that correct?

A That is correct.

Q And you don't know who typed that, do you?

A No,sir.

Q I show you this exhibit, which I ask to have marked as --

MR. FRIEDMAN: I am going to ask for the designation A-2A Judge, if I may.

THE COURT: A-2A? Very well.

(Defendant's Exhibit A-2A was received in evidence.)

THE COURT: Since it is already a part of Defendant's Exhibit A, received.

Q I ask you to look at it, sir, and while you are looking at it, would you also take another look at the order A-2A, and am I correct in stating that each of these documents, A-2A and A-2, refer to the type of material being ordered under a numerical designation 2253; is that right?

A That's correct, yes.

Q And A-2A is a memo of some type from Tabulating Forms, indicating a quotation on the particular product, 2253, is that right?

A That's correct.

Q And the quantity on the quotation from Tab Forms is 50,000, the same as appears upon the order form, A-2; is that right?

A That is correct.

Q And the price, 35.50, $35.50 as a unit price, the same as on the order form A-2, is that correct?

A That's correct.

Q So it would appear that the quotation form refers to the items on A-2; is that correct?

A Yes.

Q And this quotation form is directed by Tab Forms to Mr. Nick DiNapoli; is that right?

A That's correct.

Q And there is a signature at the bottom of the writings, G. Barney; is that correct?

A Yes.

THE COURT: We will recess at this time, ladies and gentlemen, and resume tomorrow morning at 9:30 promptly, 9:30 a.m.

Please do not discuss the case among yourselves or with any other person. You may return to your seat.

MR. FRIEDMAN: Thank you, sir.

THE COURT: In the event you learn anything about the case from any source outside the courtroom, you are directed to report the matter to me at once upon your return to court, and finally, please keep an open mind on all facets of the case until the case has been completed and given to yo following my charge.

The jury is excused.

You are directed to return tomorrow morning at 9:30 a.m.

(The jury left the courtroom.)

THE COURT: Mr. O'Toole, I am going to excuse you. You are to return to continue your testimony tomorrow morning at 9:30.

THE WITNESS: Yes, sir.

MR. FRIEDMAN: Your Honor, may I briefly address your Honor?

THE COURT: Yes.

MR. FRIEDMAN: In the interests of expediting the procedure in this case so that we don't have to go through these documents one by one, may I call your Honor's attention to the fact that on behalf of the defense, we have examined at least some quantity of the varying years documents which are covered by the indictment, and if your Honor would permit us to do so, we would like, if it is possible, to confer with the United States Attorney and to summarize the tabulation of these documents indicating for the jury ultimately how many documents are involved for each year and which bear the name of the persons who are relevant and like matters which I have addressed to this witness, so that we don't have to burden the Court and the jury.

Would that be all right?

THE COURT: You certainly are free to consult with the United States Attorney and I suggest that Rule 1006 of the Federal Rules of Evidence governs summaries and it may be that you would be in a position to present either a stipulation or a summary as permitted by that rule.

MR. KINGHAM: If I may, your Honor, there are certain difficulties inherent in that. Perhaps I ought to alert the Court to it.

First of all, there are numerous documents. We have no way of knowing of course if the files are complete. There is that problem. There is the second problem that any sensible review of these documents reveals that there is a multitude of ways in which these transactions are accomplishe

Mr. O'Toole has testified about several. Re-orders, direct purchases and so forth.

[illegible] also have the additional problem of interpretations as to who did what based on entries placed on the requisition forms and so the government is unfortunately in a position of suggesting to the Court and to counsel that it would be inappropriate for us to stipulate as to either a general practice or the number of documents on which anything appears.

If Mr. Hasenstab were to testify in this case, of cousre, and if he had personally reviewed the documents, he could testify about how many he reviewed and how many he was involved in, but barring that sort of testimony or evidence of that sort on the defense's case, as to a summary of what has been made available, I am afraid that we won't be in a position to stipulate.

THE COURT: If that is the case, we will sit here until the proof is presented.

MR. KINGHAM: I must say, your Honor, that as the Court knows, I try cases expeditiously and I don't do this with the purpose of delay in mind at all.

THE COURT: I didn't indicate that you did. I ca understand that in a purchasing atmosphere, four or five different procedures may be used, it would be difficult if n impossible and certainly not accurate to stipulate to one procedure.

If there are several and they can be fairly set forth in some sort of a stipulation, fine. If it cannot be done that way, if there can be no appropriate summary offered, I suppose you could, even if the defense wishes, ha a summary of what is contained within Exhibit A, but that apparently creates problems because that would only relate to a summary of what is in Exhibit A.

MR. KINGHAM: That's right, your Honor.

THE COURT: And apparently the government has just indicated tous that they are not prepared to indicate that Exhibit A is necessarily either complete or representative of an entire picture.

Accordingly, I guess we have to leave it to take c an item by item basis. We will do that beginning or resuming tomorrow morning at 9:30.

MR. FRIEDMAN: May I call your Honor's attention before you leave, that although we have examined these documents, we have of course not been furnished within the time limits, copies, so I have to labor through each document and bring out the points that I think are relevant and I will ask your Honor to excuse me, but I just don't have the cpoies available to facilitate what it is I am trying to show.

THE COURT: You now have the afternoon to organize your examination of the particular exhibits which relate in your view to this witness. It is now twenty minute to 2. I suggest that you have some lunch, you should have a reasonable amount of time to organize the balance of your cross examination.

Court is adjourned.

MR. KINGHAM: Thank you, your Honor.

MR. FRIEDMAN: Thank you, your Honor.

(Adjourned to Wednesday, August 24, 1977, at 9:30 a.m.)

- - -

WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
Walter O'Toole	69	115		

EXHIBIT INDEX

Court Exhibit	Identification	In Evidence
4	46	
Government		
2		90
6		110
Defendant		
A	141	146
A-1		146
A-2		149
A-2A		150

United States of America
v.
William E. Hasenstab

August 24, 1977,
10 A.M.

--

(In open court, jury not present.)

THE COURT: We are still awaiting the arrival of one juror. I believe it is juror number 12, is that right, Mr. Guranich?

THE CLERK: Yes, your Honor.

THE COURT: It is now five minutes to 10. We will just have to be patient for a few more minutes. I thought that at this point in time if there were any matters you wish to take up with the court, I would be agreeable to doing so.

MR. FRIEDMAN: If your Honor would be good enough to hear me. First, I would like to acknowledge for the record that last night I received 3500 material from the government and after reading it, as I walked to the court today, I think some of the scenery is reminiscent of photographs of Appomatox but we shall see.

THE COURT: I might add that I read or I should say I reread the Maze case very carefully and I must say I find the case clearly distinguishable from the facts as I understand them here. If you recall in that case which you cited to me at side bar yesterday, Mr. Maze was alleged to have perpetrated a fraud on, I think it was a motel by presenting a stolen, I think it was, credit card, and apparently, he handed it to the hotel clerk or the billing department as he was checking out and thereafter when the hotel sent the charge slip through for collection, the request for funds was dishonored. I can certainly see the reasoning of the Supreme Court in that case because there, the court assumed that where the defendant had stolen a bank credit card and used it to pay for services, he caused mailings in essence after the scheme was over.

The success of the scheme in that case being completely unrelated to the efforts, that is, the mailings of the motel people and others I recall in the bank to collect on the invoices. In fact, as I read the case -- the jury is here. Just have them was a moment Michael.

In that case not only were the mailings unrelated to the defendant'[illegible] scheme, but as the court pointed out, the defendant would have been much better off if the invoices either had never been mailed or I think as the majority opinion indicated had been lost in the mail. I thought that Sampson really still remained the law with Maze being an exception to the law, and as I say, I found the case distinguishable. I note that the jurors are here, but before I call them in, was there anything else you wanted to bring to the attention of the court?

MR. FRIEDMAN: Yes, Judge. I wanted to give you my request to charge if I may and I would like to have marked into the record as an exhibit a subpoena which we caused to be presented to the office of the United States Marshal in this district on the 18th of August. Last night we received that subpoena back with a notation from the Marshal indicating too late to be served and therefore we were required to send someone out to serve the subpoena upon a Mr. Sol Welger an employee of Pan American World Airways to produce certain records and I don't know whether or not in terms of our time schedule he will be promptly here, but for the purpose of letting the record indicate our attempted service, I would like to have the returned subpoena marked.

THE COURT: Yes, that will be the next Court's exhibit, I think it is 5. My suggestion also is that perhaps you can request Mr. O'Toole who will be leaving here after his cross-examination this morning to see if he can expedite the request.

MR. FRIEDMAN: I am interested particularly, Judge, in the records which I think are kept at that office.

They may become fairly essential here. I might say just before the jury comes in, I recognize your Honor has a time schedule within which the court would like to finish this case and I am trying my very best to do that. I am going to try with this witness as I continue today, to take such abbreviated form if your Honor will let me in the processing of these exhibits. I think that your Honor gathers very quickly the drift or the import of my examination. I will try just to be illustrative and perhaps refer to a number of documents at once. Since there is only the original, there has never been the opportunity for us to mark them as exhibits or to make necessarry arrangements to facilitate the entry into evidence.

I will try my very best within my power. The court recognizing, I trust, that my contact so far as the documents is concerned is relatively limited compared to the government.

MR. KINGHAM: Two matters, your Honor, first of all, I am sure that counsel inadvertently said that he received 3500 material last night. In fact as we put on the record yesterday, I gave it to counsel before trial began yesterday so what I am concerned about is that as to Mr. O'Toole, counsel had the 3500 material as to Mr. O'Toole at the time he testified.

THE COURT: Let me see if that is quite clear.

MR. FRIEDMAN: That poses no problem, Judge.

THE COURT: In other words, you concede that the 3500 material which related to Mr. O'Toole was furnished to you prior to your commencing your cross-examination of Mr. O'Toole, is that right?

MR. FRIEDMAN: Yes, Judge, I think that is a more correct statement.

THE COURT: Very well.

MR. KINGHAM: And it should also be clear again if it isn't already, that the government has made all the documents to which counsel refers available to the defendant for his perusal from the very beginning and certainly during the last couple of weeks so that counsel has had virtually as much access as he desired to these documents in preparing for trial.

THE COURT: That is the third time we have gone into this matter. That was the subject of discussion on the 15th of August. It was my understanding that during the prior week documents had been made available. There was a week's adjournment given so that the process would be completed and the matter was gone into yesterday. Unless I receive some specific request I did hear with reference to Mr. Welger, I will consider that the defendant has had the opportunity for discovery period.

Bring in the jury.

(Jury enters courtroom)

THE COURT: Good morning, ladies and gentlemen.

THE JURY: Good morning.

THE COURT: We are getting a slightly later than usual start. I know the problems of transportation in this city, but I would ask that everyone make a strenuous effort to be here promptly. It is not easy to collect a group of 20 people, 14 jurors and the attorneys and Mr. Hasenstab, witness, court reporter, deputy clerk and myself, and I know if we all make strenuous efforts in this direction, we can begin more or less promptly and I would like to make it more rather than less.

We will resume now with the cross-examination of Mr. O'Toole. Mr. O'Toole, do you understand that you are still continuing your testimony under the oath which was administered when you first took the stand yesterday?

THE WITNESS: Yes, sir.

THE COURT: You may proceed, Mr. Friedman.

MR. FRIEDMAN: Yes, your Honor.

WALTER O'TOOLE, resumed.

CROSS EXAMINATION CONTINUED

BY MR. FRIEDMAN:

Q Mr. O'Toole, I am going to continue to question you in respect to Defendant's Exhibit A which is the folder containing the documents which you have described as purchase orders, requisitions and related forms, all right?

A Yes, sir.

Q And Defendant's A as I understand it is composed mostly or maybe completely, of 1976 orders. And as I proceed, because there are so many orders here and I am going to refer to other years after Defendant's A, I may skip some forms in an effort to try and have you testify as to your knowledge concerning specific points that I am interested in. Do you understand that, sir?

A Yes, sir.

Q If in any way you don't understand my question, or you think I am leaving something out, would you be good enough to advise me so that nobody is misled as to your testimony?

A I will.

Q Thank you.

Will you tell us first please, when you left here yesterday, to where did you go?

A When I left here yesterday?

Q Yes.

A I returned to the Kennedy Airport to my office.

Q Did you go directly there from here?

A Yes, I did.

Q Directing your attention to Government's Exhibit 2 which I now show you which I think was the form that the government introduced on its direct examination of you, is that correct?

A Yes.

Q Will you look at please, the requisition form which is attached to Government's Exhibit 2.

A Yes.

Q You told us yesterday that the handwriting relating to the price and the shipping instruction and the reference on the requisition were all written in the handwriting of Mr. Di Napoli, is that right?

A That's correct.

Q In the upper left-hand corner is the name of the vendor or next to the place where there is a typewritten word vendor, isn't that right?

A Yes,sir.

Q So that somebody -- withdrawn.

Would I be correct in stating that when the requisition is made up by a department of Pan Am that requests the purchase of these materials?

A That is correct.

Q And in the particular exhibit, so the jury can clearly follow what I am requesting you about, what is the department that makes the request for the materials?

A In this particular instance?

Q Yes.

A It was the data processing department at Rockleigh.

Q And it is the data processing department that sends in the requisition to the purchasing office, is that right?

A That is correct.

Q And then am I correct, sir, that someone who is a buyer at the purchasing office writes in in the general progress or correspondence of business, writes in the price and someone there designates who the vendor shall be?

A That's correct.

Q Insofar as you know, is that a practice that was always followed in reference to the naming of the vendor, that is, was it done by someone in the purchasing department?

A There are times when it is not done by someone in the purchasing department.

Q In this particular exhibit it is. Mr. DiNapoli, who has indicated that the vendor to be chosen is Tabulating Forms?

A That is correct.

Q The requisition sheet, after it is typed -- withdrawn.

After the requisition sheet is made out, is it then given to the supervisor or someone else for approval if the normal procedure is followed?

A It is submitted for approval, that is correct.

Q In this particular instance -- withdrawn.

Is the approval indicated generally on the back of the requisition?

A That's correct.

Q On the front of the requisition where the box reads "Please refer to," and in this case, "Mr. J. DiNapoli," is that "J"?

A N.J. DiNapoli.

Q N.J. DiNapoli, it is. Mr. DiNapoli, who has written his own name in on the requisition form, is that correct?

A That is correct.

Q And he is a buyer who has referred this particular order then, to himself, for handling by writing in his name; is that correct?

A That is correct.

Q And after he has done that, the process is such that that order is to be reviewed by somebody?

A That is correct.

Q In this particular case, look at the reverse side of the requisition and tell us who reviewed that order.

A Mr. Hasenstab.

Q And where do you see that?

A At this point here (indicating).

Q You also see at the top of the page the word "Nick"?

A That's correct.

Q And the date.

A That is correct.

Q And what does that name mean?

A That indicates that on receipt of the requisition on the prescribed day, that in going through the process we described on the chart yesterday, that he was available and on duty to distribute the work to the respective buyers by commodity.

In this instance he assigned it to himself as his commodity.

Q Mr. Hasenstab you say reviewed this order accordin to the initials on the back of the form?

A That is correct.

Q He would have reviewed, I think you told us, as to the arithmetic?

A The prescribed criteria for processing, yes.

Q What would that prescribed criteria for processin be?

A Based on the information of the item, the requirement, the price and other known facts as to vendor service, reliability, etc.

Q Are you saying that he would check the quantity, check the amount, do the arithmetic, determine that the corre amount is set forth, look at the name of the vendor who had been selected --

A Precisely how. Mr. Hasenstab would do it as opposed to how I would do it; we would have to -- we know what the criteria is. Primarily, as I described yesterday, you ask what the factors were and I said price, the ability of the vendor to meet the specifications, the availability of the product to meet our time requirement and the vendor service.

Q All right.

A Those would be the criteria that would follow.

Q I would like you to look at this set of papers which I shall ask to be marked as A-3, I believe is the designation?

THE CLERK: Yes.

(Defendant's Exhibit A-3 was received in evidence.)

THE COURT: A-3 is part of A, which was previously received, so it is A-3 in evidence.

MR. FRIEDMAN: Thank you, your Honor.

Would your Honor want to see them first?

THE COURT: No, that's all right.

Q Before I put a question to you in reference to A-3, I would just like to clarify one issue:

You know that I am questioning you and you have been testifying concerning orders that were placed with Tabulating Forms, Inc., is that right?

A Yes.

Q Of course, Tabulating Forms was only one of the many companies with which Pan Am was dealing during the relevant dates of your testimony; isn't that right?

A That's correct.

Q Tabulating Forms was only one of the suppliers of different types of paper to Pan Am during this time period; isn't that true?

A That is correct.

Q Directing your attention to A-3, I show you the first page purchase order and ask you, is the reference here "J. Cordano"?

A That is correct.

Q That means that this requisition came in from what department, Data Processing Department in Rockleigh?

A That's correct.

Q That department requested goods and the reference name "Cordano" means that Mr. Cordano was assigned to handle this item; is that right?

A That is correct.

Q Mr. Cordano, in his handwriting, set down the price of the goods; is that correct?

A That is correct.

Q Had he indicated the name of the vendor at the upper left of the requisition form?

A He did.

Q And the name of the vendor that Mr. Cordano selected was Tabulating Forms?

A That's correct.

Q Is there any review by any person in Pan Am of this requisition order?

A Yes, there is.

Q Who is that?

A Mr. Hasenstab.

Q The papers also contain a record of telephone quotations or quotation; isn't that right?

A That is correct.

Q And that record of telephone quotation is in Mr. Cordano's handwriting, is that correct?

A That is correct.

Q He indicates that a bid was received from -- or price was received from Tab Forms, from Mr. Barney; is that correct?

A That is what it states here, yes.

Q Yes.

Also, he writes the words "Sole Source;" is that correct?

A That is what it states, yes.

Q And Mr. Cordano was one of the buyers in this Unit 5; isn't that true?

A That is correct.

Q I show you another set of papers and I ask that they be marked as A-4.

(Defendant's Exhibit A-4 was received in evidence.)

A May I ask a question, sir?

Q Yes, surely, if the Judge will permit you. Maybe you should ask it of counsel.

THE COURT: Counsel has no --

Q Maybe you should ask it to the Judge or tell me off the record.

THE COURT: No, everything has to be on the record.

MR. FRIEDMAN: I mean at the bench.

THE COURT: You can either have the witness ask a question and you don't have to follow up on it or you can tell him he just has to await a question from you.

Q I think you have to wait for questions from me.

A Sure.

THE COURT: All right.

Q I show you A-4, and I ask you, isn't it the fact that the requisition order which is part of A-4 is an order which is referred to Mr. DiNapoli?

A Yes, that's correct.

Q That's his handwriting there, where it says, "Please refer to," is that correct?

A That's correct.

Q This requisition form that comes in has a space in it where the person who is going to be the buyer has his or her name inserted in it, isn't that correct?

A That is correct.

Q And the buyer is the one, I think you told us, wh selects the vendor, is that correct?

A That is correct.

Q He designates it on the requisition form who we are going to get these goods from, is that correct?

A That is correct.

Q And so in this instance, when the requisition form came in, Mr. DiNapoli referred this order to himself by putting his name on it in his own handwriting; "Please refer to DiNapoli;" correct?

A Correct.

Q And DiNapoli put the price down on the requisition form; isn't that true?

A That is true.

Q Excuse me, sir. On the upper lefthand portion of this form, the name of Tabulating Forms has been entered with a stamp; isn't that true?

A That is true.

Q There is a record of a telephone quotation; isn't that true?

A That is true.

Q And that record of a telephone quotation is in the same handwriting as that which you have identified as DiNapoli's, isn't that true?

A That is true.

Q And there are three bids that are listed there: isn't that so?

A That is so.

Q Is Tabulating one of the companies listed as bidding?

A It is.

Q What is the second company?

A Moore Business Forms.

Q And what is the third?

A Printhouse.

Q Of the three bids that are listed on that form, Mr. DiNapoli's handwriting, what is the lowest bid?

A Tabulating Forms.

Q Now, sir, excuse me for grabbing this out of your hand. Here is a portion of the same exhibit which I think you have described previously as a bid confirmation or a bid quote from Tab Forms; is that right?

A That's right.

Q That bid quotation from Tab Forms is addressed to Pan American, "Attention Nick DiNapoli;" is it not?

A That is correct.

Q So that this bid quotation which reads:

"Our quotation on your forms is as follows,"

and then the detail is set forth, that quotation was directe directly to Mr. DiNapoli; isn't that so?

A That is so.

Q There is a signature down there which appears to be G. Barney, at the bottom, isn't that right?

A Well, it is not clear, but I can assume so. I would say --

Q That is about the best we can read, all right?

And it is on a form, a piece of paper with the letterhead of Tab Forms, the company concerned, isn't that so?

A That is so.

Q I show you an isolated piece of paper.

THE COURT: You had better isolate it by name.

MR. FRIEDMAN: Yes.

THE COURT: That will be A-5, I believe that is the next number.

xx (Defendant's Exhibit A-5 was received in evidence.)

THE COURT: Would you describe that?

MR. FRIEDMAN: Yes, your Honor.

This is a letterhead, green in color, the letterhead bearing the name Tab Forms, and is a quotation form which has been similar described by this witness in reference to the previous exhibit.

THE COURT: Thank you.

Q This is a quotation follow-up form; is that not so, sir?

A That's correct.

Q And that is from Tab Forms, is that correct?

A That is correct.

Q And that is directly addressed to the attention of Mr. Nick DiNapoli, is that correct?

A That is correct.

Q And there is an order number there and --

A No, sir.

Q I'm sorry, form number there.

A That's correct.

Q And quantity and price and the signature of what purports to be Mr. Barney's name.

A That's correct.

MR. FRIEDMAN: May I just show this one document to the jury, Judge?

THE COURT: Yes.

Can I suggest, ladies and gentlemen, that wherever possible, two of you look at the document together?

MR. FRIEDMAN: Could I take the liberty in reference to A-4 and start that in the back and have the jury look at it and indicate that these are illustrative of the

THE COURT: Yes, and I would appreciate it if the jury would sort of criss-cross these so that everyone gets to see both of them.

(Pause.)

THE COURT: While the jurors are looking at the exhibits, let me speak with counsel at the side bar. I want to speak to you regarding the time table.

(Discussion off the record.)

THE COURT: You may proceed, Mr. Friedman.

MR. FRIEDMAN: Thank you.

Q Mr. O'Toole, I don't think I had directed your attention in my questions to Exhibit A-5 after having it marked, but just in case to make it clear, is it not true that A-5, which has been shown to the jury, is another quotation form follow-up addressed to Mr. Nick DiNapoli directly from Tab Forms?

A That's correct.

Q I pass to this series of documents, which I ask to have marked as Defendant's Exhibit A-6.

(Defendant's Exhibit A-6 was received in evidence.)

Q I show it to you, sir, as I stand by your side, and first, ask you this question:

Is the first page a purchase order?

A Yes, it is.

Q Is the second in reference to the first page, the purchase order, the typewritten section of that order has the writing, "Confirming order placed by Mr. DiNapoli on 10/21/76 to your Mr. Barney." Those are the written word is that correct?

A That's correct.

Q And that would mean that when this purchasing order was prepared, someone in the clerical department for data, which had been received by them, typed on here the fact that it was Mr. DiNapoli who had placed the order directly with Mr. Barney,is that right?

MR. KINGHAM: Objection, your Honor. The document speaks for itself.

THE COURT: Sustained.

The form is what I am sustaining it on. If you wish to rephrase it, you may.

MR. FRIEDMAN: Yes, I will.

Q The document itself indicates the placement of the order by Mr. DiNapoli to Mr. Barney, does it not?

A What is typed on there is indicative of it.

Q Yes.

The reference on that is Mr. DiNapoli, is that correct? That is, on the purchase order.

A That is correct.

Q As a part of the same order, which is numbered 42584, there is another piece of paper bearing the same number which is different than the other papers that you have described, and I am now showing you this different appearing paper and ask you to describe it.

A That is a purchase order supplement or a change notice. It is something that issued after the fact to make a change.

Q And the change -- withdrawn.

This supplement order was referred to Mr. Cordano, is that correct?

A That's correct.

Q That is what the form indicates; isn't that so?

A Yes, yes.

Q I think you had testified and you correct me if I am wrong, sir, that you indicated that you had had some opportunity to look through Defendant's Exhibit A at some time prior to the trial, or you were at least familiar with those order forms.

A I am familiar with the file. I looked at them on a very casual basis.

Q Would it be true to say -- and I don't want you to give me anything but your best knowledge here -- would it be true to say that from your inspection of the bulk of those records, very few of them have in that portion of the requisition form where it says, "Please refer to," very few have the name of Mr. Hasenstab, if any?

A I have no recollection that any of them do.

Q None do in your recollection?

A To the degree that I have observed the file. It was not in detail.

Q Is it not true that the bulk of these transactions insofar as the reference name is concerned, contain the name DiNapoli, Cordano, Amy McAdams and R. Dickinson?

A I can only attest to what I have been shown here at this particular time, the ones that we have reviewed personally.

In reviewing the file or having seen it prior to this, I have no detailed observations.

Q But your recollection is very few -- withdrawn.

Your recollection is such that you do not recollect seeing Mr. Hasenstab's name there?

A I have no recollection, no, sir.

Q I show you these three sets of order forms which ask to have marked collectively as Defendant's A-7. I will do it separately if your Honor prefers.

THE COURT: No, if you are going to deal with the as a group, I think it is adequate to keep the designation as indicated.

MR. FRIEDMAN: I am going to deal with them as a group.

THE COURT: A-7 is already in evidence.

xxx

(Defendant's Exhibit A-7 was received in evidence.)

Q You had told us, sir, on your examination, that th user department did not make the selection of the vendor; is that correct?

A It is not customary, that is correct. Did I specifically --

Q Let's get your best testimony.

Is it that it is not customary?

A It is not the practice or policy for the user department to commit Pan American for goods and services.

Q But it does happen on occasion, I take it?

A Because of the uniqueness of the environment we are working in, yes, sir.

Q I show you A-7 and ask you, sir, isn't it true that A-7 collectively refers to three orders placed by Pan Am with Tab Forms, Inc., and does not the documents show that these three orders were placed by an individual named J. Furey?

A That's correct.

Q And J. Furey was a person who was employed in the user department of Pan Am in a facility in New Jersey, isn't that true?

A That's correct.

Q So that Mr. Furey as in whatever capacity he had in the user department, gave business to Tab Forms during 1976 as is shown on those three exhibits, all of which have been designated Exhibit 7?

MR. KINGHAM: Objection, your Honor. The term "gave business to Tab Forms."

THE COURT: Yes, I think the term can be improved. You could certainly inquire on the subject.

Q Would I be correct in stating that the order forms indicate that the order was placed by Mr. Furey?

A That's correct.

Q What was his position with Pan Am; do you know?

A I don't know specifically, sir, no.

Q Are the dates involved in the year 1976?

A Yes, they are.

Q Are the people whose names appear as the reference name, "Please refer to," isn't it true that Mr. Cordano or J. Cordano is the reference in each one in this series? Is the reference in each situation?

A That's correct.

Q Cordano is the buyer in your department?

A That's correct.

Q And his name is listed there as a reference.

THE COURT: Am I correct that Mr. Furey was not in your department in 1976?

THE WITNESS: That is correct, sir.

MR. FRIEDMAN: If your Honor please, I am finished with D, if I may, all of which are in evidence.

THE COURT: That is A?

MR. FRIEDMAN: I'm sorry, yes.

Q Mr. O'Toole, I show you a folder of documents which I ask to have marked collectively as Defendant's B.

THE COURT: Very well, the folder is marked Defendant's B for identification.

MR. KINGHAM: No objection to its admission into evidence, your Honor.

THE COURT: You wish to offer them?

MR. FRIEDMAN: I so move.

THE COURT: Very well, received.

(Defendant's Exhibit B was received in evidence.)

MR. KINGHAM: May I see it please?

MR. FRIEDMAN: Sure, I'm sorry.

(Pause.)

T2B

THE COURT: Inasmuch as the folder is now in evidence, would you just designate for the record what is contained in it?

MR. FRIEDMAN: Yes, your Honor, I will. This folder contains Pan American records of the same type previously described in Defendant's A and the orders which are the subject of this folder, Exhibit B, refer principally if not exclusively to the year 1973.

Q I ask you please to look at that exhibit and tell us as you are looking at it if you will, whether or not some time in the more recent past you have had an opportunity to look at those documents.

A Well, in the more recent past which was the other day, I was aware of the folder, but I did not go into any detail in its content.

Q Would you agree, sir, that the documents which are in Exhibit B are substantially of the same type that you described for Exhibit A?

A Yes.

Q Would you just look through, or let me help you.

The first set of documents, does not the purchase order refer to placement of an order by Mr. Di Napoli to Tab[illegible]ng Forms?

A Yes.

Q The second document indicates placement of an order by telephone but no name as to who did it, is that right?

A That's correct.

Q On the first document, the reference name is Di Napoli, is that correct?

A That's correct.

Q On the third document, the order is indicated to have been placed by Mr. Di Napoli and Mr. Di Napoli is the reference to this order in '73, is that right?

A That's correct.

Q There is another Di Napoli, is that right?

A I'm sorry, I have bifocals.

Q I do too and I am closer, I'm sorry.

A No, sir.

Q Pardon?

A No, sir. You asked about the reference or did you ask --

Q I'm sorry. Does the purchasing order indicate that it was placed by Mr. Di Napoli?

A It indicates placement by Mr. Di Napoli, yes, sir.

Q And the reference is Callahan?

A That's correct.

Q And that is true as to the next one?

A That is correct.

Q The next one has a reference to Di Napoli and an indication of a telephone order but no name of the person who placed it, is that correct?

A Correct.

Q I want you if you would, to look through these with me as I hold them up to you and look at the purchase order itself and tell me if you see the name on the purchase order of Mr. Hasenstab.

A No.

Q Now the next one, please. Look at the face of this purchase order. The reference is not to Mr. Hasenstab, is it?

A No, it isn't.

Q And that is true with the next one?

A Yes, sir. No, sir, I'm sorry, his name does appear here.

Q Where is his name?

A Right here, sir.

Q "Please send six samples to Mr. William Hasenstab Pan American World Airways Pan Am building." That is typed on there, is that right?

A Yes.

Q Samples were always sent to the head of the purchasing department, is that true?

A Samples were sent as requested.

Q To the head of the purchasing department?

A No, sir. Whoever would stipulate a request for samples, they would be furnished.

Q So that this stamp on here "Please send samples to" could be put down by or would be put down by the person requesting it, not necessarily Mr. Hasenstab, is that what you are saying?

A I am assuming that whoever wanted the samples requested them but without looking into the balance of the file, I can make no determination of who requested it, or whether it is just a formality of a rubber stamp.

Q I show you another folder of documents that I ask to have marked as --

THE COURT: That will be Defendant's C for identification.

xx (Defendant's Exhibit C marked for identification.)

THE COURT: Mr. Friedman, do you wish to offer this particular folder at this time? It might save time if you do if we could let Mr. Kingham just look at it, since I gather he furnished it to you.

MR. FRIEDMAN: Yes, your Honor.

MR. KINGHAM: No, your Honor.

THE COURT: Very well C is received if you wish to offer it, sir.

MR. KINGHAM: And we will agree that those are the same type of documents and they relate to the February and March, 1973.

THE COURT: Same type as Mr. Friedman described before?

MR. KINGHAM: Yes, your Honor.

THE COURT: February and March, 1973.

(Defendant's Exhibit C received in evidence.)

Q I show you these documents, sir, and I ask you to look at them and tell me in reference to the reference name is Mr. Di Napoli's name there?

A Yes.

Q But next to his name in this particular document are the numerals 65/AP.

A Yes.

Q Does that have some personal meaning to you?

A 65 is the buyer number and AP would be the typist.

Q The next one is Di Napoli also, is that correct?

A That's correct.

Q And the next one is Di Napoli, I'm sorry.

A Yes.

Q And the next one is Callahan, is that right?

A Yes.

Q And the one after that is Callahan, is that correct?

A That's correct.

MR. FRIEDMAN: I now offer as Defendant's D a folder.

xx (Defendant's Exhibit D marked for identification.)

THE COURT: Is there any objection, Mr. Kingham?

MR. KINGHAM: No objection to D, your Honor, which again contain similar documents for early 1973.

THE COURT: Very well.

xx (Defendant's Exhibit D received in evidence.)

MR. FRIEDMAN: May I indicate, your Honor, I am using separate folders because that is the way the term was given to me.

MR. KINGHAM: And likewise no objection to what I assume will be. For identification. Again similar documents for periods of 1973.

MR. FRIEDMAN: I would ask that it be D and E in evidence if there is no objection.

MR. KINGHAM: No objection.

THE COURT: D and E are received there being no objection.

xx (Defendant's Exhibit E received in evidence.)

THE COURT: Are they also 1973?

MR. KINGHAM: They are mixed months.

THE COURT: I will leave it then. Very well.

Q Mr. O'Toole, I show you the first set of order papers out of D, Exhibit D, the reference name is McAdams, is that so?

A Yes, sir.

Q McAdam was a buyer in your department?

A That's correct.

Q And the next order form is McAdams, is that correct?

A That's correct.

Q And the name Tabulating Forms, incidentally is in the upper -- withdrawn.

In reference to the requisition form, that bears the name Tabulating Forms as the indicated vendor, is that correct?

A That's correct.

Q And that is under the reference on the requisition which has the name of McAdams as the reference or buyer, is that correct?

A That's correct.

Q And the next one is Di Napoli, is that right?

A That's correct.

Q And the one following that is Di Napoli?

A Correct.

Q The next one is Di Napoli?

A Correct.

Q And Di Napoli again, is that correct?

A Correct.

Q And here is one by McAdams, is that correct?

A Correct.

Q And here we have one by Mr. Hasenstab?

A Correct.

Q And here we have another one by Mr. Hasenstab, is that correct?

A Correct.

Q And going into folder designated E, the first one is Callahan, is that correct?

A Correct.

Q The next one is Callahan, is that correct?

A Correct.

Q The next one is Callahan, is that correct?

A Correct.

Q In each of these, am I correct, sir, that the vendor is indicated to be Tabulating Forms, Inc.?

A In this one, yes.

Q And that is on the purchase order of these others, that is what we are talking about, the orders given to Tabulating Forms, Inc. and who gave them to Tabulating Forms according to the requisition, is that right?

A I can't ascertain who gave them to them. I can only attest to what is stipulated on --

Q The document?

A Right.

Q That is all I am asking, sir, is what the document says. And here is another one for Callahan, is that correct?

A Correct.

Q Another one for Callahan, is that correct?

A Correct.

Q An additional one for Callahan, is that correct?

A Correct.

Q Now here is Mr. Di Napoli again, is that correct?

A Correct.

Q Di Napoli again, is that correct?

A Correct.

Q And Di Napoli again, is that correct?

A Correct. Okay. Thank you.

T3A MR. FRIEDMAN: May I offer collectively at this time into evidence if your Honor please, six folders which I would ask to have marked as Defendant's F in evidence if there is no objection.

THE COURT: Show them to counsel after they have been tagged or prepared for tagging if you would, Mr. Guranich. I see Mr. Kingham is looking at them now.

MR. KINGHAM: I have no objection, your Honor. They are similar documents relating to the year 1974.

THE COURT: Very well. F received, there being no objection.

xx (Defendant's Exhibit F received in evidence.)

MR. FRIEDMAN: And of course your Honor understands that I am not requesting that the jury look at these now in order to save time.

Q Mr. O'Toole, referring to the first document in Exhibit F, the purchase order. Do you see the typewritten expression that I am pointing to?

A Yes.

Q That reads "Confirming order placed by Ms. Halicki to your office."

A That's correct.

Q Ms. Halicki was someone in the purchasing department or a user department or where?

A User department.

Q So here again on this particular form, it was somebody in the area where the goods were used or the user department, who placed the order specifically and requested that Tabulating Forms be the supplier?

A That's correct.

Q And that order was processed by A. McAdams, is that Amy McAdams?

A Yes, sir.

Q And here is one, the next one is a reference J. Mardosa, he was the buyer there, is that correct?

A Yes.

Q And the next one is Callahan, is that right?

A Yes.

Q And Callhan?

A Yes.

Q The next one is Di Napoli, is that correct, sir?

A The reference, yes.

Q The reference is Di Napoli?

A Yes.

Q And the next one the reference is Di Napoli, is that correct?

A The reference, yes.

Q In this one that you have just identified as being a reference to Mr. Di Napoli, that is Mr. Di Napoli's handwriting on the requisition form where it says "Please refer to"; is that correct?

A Yes.

Q And the form indicates that Tabulating Forms was used as the source of the goods, is that correct?

A That's correct.

Q The next document refers to Amy McAdams as the reference source, is that correct?

A Yes.

Q And her handwriting on the requisition designates the vendor Tabulating Forms, is that correct?

A Yes.

Q The next one has a reference J. Mardoa, is that correct?

A That's correct.

Q And on the requisition form where the selection of the vendor, the seller, the supplier of goods to Pan Am is indicated, the handwriting of Mardosa appears to have indicated Tabulating Forms, Inc., isn't that right?

A That's right.

Q Going on to the next document, sir, is the next reference source Callahan?

A Yes.

Q And the next one Callahan?

A Yes.

Q And the next one Callahan?

A Yes.

Q And the next is Callahan, is that correct?

A That's correct.

Q And the one processed by Callahan that we are now referring to has typed on it "Confirming order placed by Mr. Di Napoli on 7/16/74 to your Mr. Barney," isn't that right?

A That is what it states.

Q And the next one is a reference to Mr. Callahan, is that correct?

A That's correct.

Q Mr. Callahan is one of the buyers, right?

A No, sir.

Q Who is Mr. Callahan?

A Mr. Callahan was the unit manager prior to ny taking over the functions of the unit. Mr. Hasenstab's supervisor comparable to myself at the present time.

Q Okay. So his name appears there and there is an order placed there by Mr. Di Napoli while working under the supervision of Mr. Callahan, isn't that right, according to this form?

A That's correct.

Q Take it please.

THE COURT: Let me see if I can clarify something.

THE WITNESS: Yes, sir.

THE COURT: At the time when Mr. Callahan was the manager.

THE WITNESS: Yes, sir.

THE COURT: Who was the supervisor?

THE WITNESS: When Mr. Callahan was the supervisor, Mr. Hasenstab.

THE COURT: When Mr. Callahan was the manager, Mr. Hasenstab was the supervisor?

THE WITNESS: That's correct, sir.

THE COURT: And then you replaced Mr. Callahan?

THE WITNESS: That's correct.

THE COURT: And Mr. Hasenstab remained in the same position as supervisor?

THE WITNESS: That's corredt.

THE COURT: I see. Thank you.

Q And the position of supervisor was in your table of organization under the manager, is that correct?

A That's correct.

Q Would you go on to the next document, please, sir. Is the reference there Callahan the manager?

A Correct.

Q An indication of an order placed by telephone but no indication of who did it, is that right?

A That's correct.

Q And if you look at that last one, please, that also deals with Tabulating Forms as being the vendor, does it not?

A It does.

Q And this next one is Callahan, is that correct?

A Correct.

Q And the next one is Di Napoli, is that correct?

A The reference, yes.

Q And the next one is Di Napoli as the reference, isn't that right?

A Correct.

Q And the order form itself indicates the words "Confirming order placed by Mr. Di Napoli on 10/1/74 to your Mr. Barney," is that correct?

A Yes, that's correct.

Q And the next one is Di Napoli again, is that correct?

A Correct.

Q What indication on the order form of a confirmation of the order having been placed by Mr. Di Napoli?

A Correct.

Q So that Mr. Di Napoli according to the form, when this order came in referred the handling of this matter to himself and the purchasing order itself indicates that he had made the order by telephone call, is that right?

A That's correct.

Q And the next document, sir, is DiNapoli again, as the reference, individual, is that correct?

A Correct.

Q I turn to the next folder, sir.

Is the reference Callahan?

A Correct.

Q Callahan again?

A Yes, it is.

Q DiNapoli with the order confirmed to have been placed by DiNapoli?

A Yes.

Q And the next one Callahan with the order indicated as having been placed by DiNapoli?

A That's correct.

Q And that was for what year, sir, is that '74?

A The orders are for 1974, yes, sir.

Q Going to the next folder, sir.

Is the reference Callahan again?

A Yes.

Q And the next one Callahan?

A Yes.

Q And the next one Callahan?

A Yes.

Q And the next one Callahan?

A Yes.

Q Taking the next folder, sir is the reference Callahan?

A Yes.

Q In this case however, the order form indicates that the order was confirming order placed by Mr. Mardoza on 3/1/74 to your Mr. Barney; does it not?

A It does.

Q And Mr. Mardoza worked in what department?

A Worked in the Purchasing department.

Q And the form indicates that he placed the order; correct?

A It indicates it, yes.

Q And the next one has a reference to Mr. Callahan.

A Yes.

Q And the next one Mr. Callahan, was ordered placed by Mr. DiNapoli; is that right?

A Yes.

Q And the next one has a reference of Callahan.

A Yes.

Q And the next one a reference Callahan.

A Yes.

Q The next one a reference Callahan with the order being placed by Mr. DiNapoli; is that correct?

A That's correct.

Q The next one a reference to Callahan.

A Correct.

Q The next one a reference to Callahan with the orde placed by Mr. DiNapoli .

A Yes.

Q And the next one again Callahan with the order placed by DiNapoli, is that correct?

A Correct.

Q I know that we will be happy to be through with that exhibit.

MR. FRIEDMAN: I would like to offer at this time, if it pleases the Court, two folders, and ask that they be designated as G. They contain like documents, and I will give them to the government as soon as they are marked.

I would like to offer them in evidence.

THE COURT: Very well.

(Defendant's Exhibit G was marked for identification.)

MR. KINGHAM: No objection, your Honor. These are both folders relating to purchase order documents for the year 1975. No ojbection to their receipt in evidence.

(Defendant's Exhibit G was received in evidence.)

MR. FRIEDMAN: Thank you.

Q Mr.O'Toole, I direct your attention to the first set of papers within this exhibit.

Is the reference on the purchase order DiNapoli?

A Yes, it is.

Q Does the order indicate "Confirming order placed by Mr. DiNapoli on 2/24/75 to your Mr. Barney"?

A It does.

Q And on the requisition sheet, sir, is the referenc name N.J. DiNapoli in Mr. DiNapoli's handwriting?

A Yes, it is.

Q Is the indication on this requisition form that the vendor selected is Tabulating Forms?

A It is.

Q Is there a stamp on it, "Please send ten samples to William Hasenstab"?

A It is. It is there.

Q Look at the back of the requisition form, sir, and tell me is there an approval or a review signature on that form?

A Yes, there is.

Q Whose initials appear there?

A Mr. Hasenstab's.

Q Who else has his name on that paper, on the back of it?

A Mr. DiNapoli.

Q Does the next one have a reference to Mr. DiNapoli

A Yes, it does.

Q And does it say, "Confirmation by N. DiNapoli on 10/15/75 to your Mr. Barney"?

A It does.

Q And the next one sir is similar?

A Yes, it is.

Q And the next one is similar?

A Yes.

Q The next one similar?

A Similar, yes.

Q The next one is a reference to DiNapoli in the reference box.

A Yes.

Q And the next one has a reference to DiNapoli, is that correct?

A Yes.

Q May I have it back, please?

And the requisition form is in DiNapoli's handwriting, is that correct, where his name is indicated?

A Where his name is, yes.

Q And where the price is indicated?

A Where the price is, yes.

Q And there is a bid quotation sheet attached to the papers, is that correct?

A That's correct.

Q And is that in Mr. DiNapoli's handwriting?

A I will have to check that.

Yes.

Q And the next one is DiNapoli again, is that correct?

A Yes.

Q And the last --

THE COURT: I think there is a second one there. I think you handed two to the witness together.

Q The next one is DiNapoli again with an indication that DiNapoli placed the order; is that correct?

A That's correct.

Q And the last one, sir?

A The reference to Mr. DiNapoli's name is there, yes.

THE COURT: We will take our recess at this time, ladies and gentlemen.

Please do not discuss the case among yourselves. Should you learn anything about the case from any source outside the courtroom, I direct that you report the matter to me at once on your return.

Finally, please keep an open mind on all facets of the case until the case has been completed and given to you following my charge.

We shall resume promptly at 12:45, and shall continue until approximately 4:30 to a quarter of 5, so you can plan accordingly.

The jury is excused. Enjoy your lunch. See you at 12:45 promptly.

(Luncheon recess.)

AFTERNOON SESSION

12:50 p.m.

THE COURT: Good afternoon, everybody.

You may proceed, Mr. Friedman.

MR. FRIEDMAN: Thank you, Your Honor.

WALTER O'TOOLE, resumed.

CROSS EXAMINATION CONTINUED

BY MR. FREIDMAN:

Q Mr. O'Toole, before I finish up on the question of the documents and your identification of them and the type of testimony that you have given, I want to go to another area for a moment, if you will bear with me. When were you first contacted by the government in connection with being a witness relative to this case?

A As being a witness, I believe it was approximately a week ago Monday.

Q At some time prior to that, had you been interviewed by representatives of the FBI?

A That's correct.

Q You know Mr. DiNapoli, of course, he having worked in your department?

A Yes, I do.

Q As I understand your testimony, sir, in reference to the line of authority or table of organization or chain of command, your function, you have indicated, as manager, was to review for distribution to the buyer, is that right?

A That's correct.

Q When you say review for distribution to the buyer, does that mean that you as the manager would look at the requisition that came into the company and determine to what particular purchasing agent the requisition would go?

A Not specifically in the way you described it sir, no.

Q As manager, was the practice such that all requisitions that came into the purchasing office came across your desk?

A Not in that -- if you are referring to the buying unit, yes. If you are referring to the purchasing office, no.

Q As to the buying unit.

A Correct.

Q What specifically would you do which constituted your review as a manager in reference to that requisition?

A I would review the package of requisitions as I previously indicated, make a determination that the requisition as received properly belonged by commodity in the buying unit and as I previously indicated, highlighted any particular requisitions that significantly because of their required date or other -- for any other reason, would require any more expeditious handling on the others or direct some statement or question to a buyer that they can anticipate a requisition as coming through or this is something we have been looking for, or to handle it in such a fasion, merely to do a review of them and cover those aspects generally as to their future handling.

Q So that with the requisitions that came in in reference to the buying unit, your function, after you had determined that they properly belonged in your buying unit, you as a manager, made sure of that by looking at them, is that correct?

A That's correct.

Q And in this particular case, if the order happend to be for paper, computer paper, you would look at that order and say, "Well, this belongs here, it's not an order for apples" -- if apples weren't part of your business, right?

A Well, the apples aren't, but the papers are too, sir.

Q If something came in that wasn't part of your buying unit, would you reroute that requisition somewhere?

A No, that would be taken care of normally by the individual described as Mr. DiNapoli or the person in that work function who would take appropriate action to effect a transfer of the item to the proper buying unit in the course of normal duties.

Q You have indicated that one of your functions was to review these requisitions coming in to see if they are in the proper place, the proper unit?

A Yes, sir.

Q Are you saying that even if something was not properly in your unit, you took no action, but rather let the buyer do it?

A That's correct, sir.

Q So you actually didn't then review it for that function?

A It is part of my function to do that. That's the way I work, sir.

Q Well, you were being paid as a manager, is that right?

A That is correct, sir.

Q As a manager, you were a supervisor of some type within this department, isn't that correct?

A That is correct.

Q And you had an overall responsibility?

A That is correct.

Q In reference to the running of that department; is that correct?

A That's correct.

Q Something that came to your unit that shouldn't be there, you would let the buyer take care of it?

A If it came to my obvious attention, and it was important to bring it to his, I would. In the normal course of business, he would take the appropriate steps to reject it.

Q As a manager you have indicated that when somethin came in that might be I think sensitive to time, you might note it -- that is, an order that perhaps had to be filled perhaps in a certain period of time.

A Had been filled or would have to be.

Q Would have to be filled.

A Yes, that's correct.

Q And then you might call it to the attention of the buyer?

A That is correct.

Q You assigned the material out to the buyer?

A No, sir.

Q Who did that function?

A Mr. DiNapoli, sir.

Q How long do you know Mr. DiNapoli?

A I know of him for over ten years. I can't focus on the precise time, but I know of him for at least that period.

THE COURT: How long have you worked with him?

THE WITNESS: Since the merging of the buying unit in January of 1975, sir, when I took over the supervision of the unit.

THE COURT: After that, did you work with him on a day to day basis?

THE WITNESS: Since that date I have been manager or supervisor, manager.

Q You have had contact with him on a daily basis?

A Yes, since that date.

Q So it isn't a question of your knowing him, but rather that you do know him from working with him every day.

A That is correct.

Q As a matter of fact, when we took our last recess before you resumed the stand, you met with him outside here, isn't that true?

A I was in his company, that is correct, sir.

Q Did you then go somewhere together with Mr. DiNapoli?

A Yes, sir.

Q To where did you go?

A Went to Chinatown.

Q Did you have your lunch there or some food there?

A Yes, we did.

Q On the way over to Chinatown from this building, did you have any occasion to discuss with Mr. DiNapoli the nature of the questions which had been put to you and the answers which you had given concerning those questions?

A No, sir.

Q Had anyone instructed you not to discuss this case with Mr. DiNapoli?

A I think I received instructions that when I started here yesterday, that I was a witness or I am a witness, and I am not to discuss the case with anybody until I am otherwise instructed; if I understood the instruction correctly.

Q And you say that you did not talk to Mr. DiNapoli at all about your testimony?

A About my testimony, no, sir, I didn't.

Q Did you talk to him at all about this case?

A About what has transpired? No, sir.

Q Did you talk to him about any aspect of this case?

A Yes, I did.

Q What aspect of it did you discuss with him?

A I talked to him about the timeframe, and the indication that we were breaking for lunch and the case was to resume at a quarter of 1 and as the Judge indicated, that we would be here until about 4:30 , 5 o'clock.

Q And you, I take it, sir, never discussed with Mr. DiNapoli the fact that you were being questioned relative to these documents which have been marked as exhibits in connection with this case?

A That is correct.

Q And did Mr. DiNapoli ask you any questions relating to the nature of the testimony that you had given or what was happening in the courtroom?

A No, sir.

Q Not even one word?

MR. KINGHAM: Objection, your Honor, asked and answered.

MR. FRIEDMAN: I will let it stand, all right.

THE COURT: Very well. Next question.

Q Do you know Mr. Barney?

A When you say "know," sir, could you define that, please? I can tell you what my knowledge of him is if that would be helpful. I don't understand the word "know" in this instance.

Q You don't understand the word "know"?

A In this instance.

THE COURT: I think you can ask the question, rather pose one --

Q Have you ever been introduced to Mr. Barney?

A No, sir.

Q Have you ever shaken hands with him?

A No, sir.

Q Have you ever had any conversations with him?

A Yes, sir.

Q When for the -- when at the last date can you tell us?

A The occasions I had to speak to Mr. Barney do not exceed, to my knowledge, three times, and that was during the month of -- to the best of my recollection, March of '77.

Q Is there a Mr. Welger employed by Pan American?

A That is correct, sir.

Q And Mr. Welger is employed in the Rockleigh, New Jersey division?

A That is correct.

Q And that is a user department of Pan American, is that correct?

A That is correct, too.

Q Does he have a title that you know of?

A I frankly don't know what his title is. If I could extend a guess, it has to do with something of a financial analyst. Something goes before it, but it is available in the file.

Q In reference to your testimony concerning those instances where Mr. Hasenstab's initials were on the back of the requisition form, you remember pointing out those occasions?

A Yes, I do.

Q On some of the forms.

A Yes.

Q Isn't it true that one of Mr. Hasenstab's function for Pan American was to keep a sample file in which were placed the samples of paper from the different suppliers to Pan American?

A It has been our policy to maintain a sample file, that is correct.

Q And Mr. Hasenstab had that job, isn't that right?

A That was a file he was maintaining, that is correct.

Q And that's why the order forms would read on occasion, "Send samples to Hasenstab," because he was in charge of that file; is that correct?

MR. KINGHAM: Objection, your Honor.

THE COURT: Grounds?

MR. KINGHAM: I will withdraw it.

THE COURT: Very well.

MR. KINGHAM: It is unimportant.

THE COURT: Could you answer the question or would you like it read back?

THE WITNESS: I would appreciate the question again, sir.

THE COURT: Mr. Reporter.

(Question read.)

A Yes.

Q And one of Mr. Hasenstab's functions, I take it, being in charge of that file and being a supervisor, was from time to time to look at the samples and make a determination if they met the quality which had been set forth as the standard in a given order, isn't that true?

A That is correct.

T1B

Q And as he would review orders from time to time that were going out, would it be fair to say that if he saw a vendor's name as the supplier of a particular commodity, and he was aware of the fact that the samples which he had received didn't measure up, he would then be in a position to say to the buyer in substance "Tell this fellow his samples aren't up to what we are supposed to be getting."

A That's correct.

Q And so when Mr. Hasenstab would on occasion review those requisitions, and he would see the name of the buyer and see the name of the -- or the type of the commodity if he had had samples of that commodity, one of the functions he would exercise would be that which you have described, that is to reject or accept depending upon the quality of the goods?

A That is a fair statement.

Q And the indication of his review would be that he would put his initials on the back of the requisition form at the place of the stamp that was indicated that you showed us on some of those exhibits, is that right?

A That's correct.

Q Before the recess, we were looking at Exhibit G, which was comprised of two folders. And you went through the first one, I believe and I am now directing your attention to the second folder which comprises Exhibit G. Would you just generally look through these, please.

THE COURT: You want him to look for something in particular?

MR. FRIEDMAN: I just want him to look at them generally, Judge.

Q I will ask the question, would you say sir, that if I put questions to you concerning to whom these orders were referred and whose handwriting is on there, would you say substantially that your answers would be the same that the bulk of them or perhaps all of them do not have Mr. Hasenstabl's name as the party to which the order is referred, or the -- or his name is not the party who indicated the price or the supplier on the requisition?

A I would agree, sir.

MR. FRIEDMAN: I now offer in evidence as Defendant's H three folders, if your Honor please, containing documents which I represent from my brief inspection of them here are like documents to those previously offered.

THE COURT: I gather they are purchase orders and related forms and they cover a period of approximately when?

MR. FRIEDMAN: The year 1972.

MR. KINGHAM: 1972, your Honor.

THE COURT: Very well.

No objection.

THE COURT: Received.

xx (Defendant's Exhibit H received in evidence.)

Q Directing your attention to the first set of forms in Exhibit H, Mr. O'Toole, on the purchase order of this first form, the reference "Please refer to" there is typed in the words "W. Hasenstab, 65/GL"; isn't that right?

A That's correct.

Q So this purchase order has Hasenstab's name listed?

A That's correct.

Q But 65 GL is a numerical and alphabetical code which has a meaning within your company, is that right?

A That is correct.

Q And what does the 65 stand for?

A 65 is a buyer's number.

Q And being typed here as distinguished from -- I will rephrase that. Can you tell us who the buyer was under number 65 at this time?

A No, sir.

Q GL, I think you have indicated previously was a designation for the typist or secretary who prepared the paper?

A That's correct.

Q In fact, the requisition on this particular order has a handwriting with the name in a box "Please refer to W. Hasenstab 65, 4, 18, 72.

Q That is in the reference box on the requisition form, is that right?

A That's correct.

Q But that handwriting "Please refer to W. Hasenstab" is not in Mr. Hasenstab's handwriting, is it?

A I am not familiar with that signature.

Q You are not familiar with it as being Mr. Hasenstab's, isn't that correct?

A I am not -- that's correct, I am not --

Q And 65 underneath that handwriting though, is the identity of the buyer no matter what that buyer's name might have been, isn't that so?

A That's correct.

Q And the handwriting 65 and the handwriting W. Hasenstab are the same, it is in the sams colored ink, right?

A That's correct.

Q So the buyer has identified himself or herself by his number or her number, 65, and has indicated "Please refer to Mr. W. Hasenstab," right?

A That's correct.

Q May I have the document, please? And the upper left-hand corner of the requisition form, there is indicated the name of Tabulating Forms, Inc. as being the vendor, isn't that true?

A That is true.

Q And the price is indicated in the same colored ink in what is apparently the same handwriting as the person who wrote 65 and W. Hasenstab, isn't that right?

A That's right.

Q And as a matter of fact, there is a line here "Confirming order placed by telephone to your Mr. Barney." Telephone and Mr. Barney is written in ink next to the words "Confirming order placed."

A That's correct.

Q And that would appear to be the same handwriting as that of number 65, isn't that true?

A It would appear to be.

Q Tell me as manager of this department, on this requisition form, where the expression is "Confirming order placed by telephone to your Mr. Barney." The telephone that is referred to, doesn't that mean a telephone call has been made from the user department at some time asking that these goods be ordered?

A I can't --

Q You can't tell?

A That is not the correct -- you indicated by the user department. It can be construed and in most cases it is suggested that it is placed by the buyer,

Q When you say placed by the buyer, you mean the writing is placed by the buyer on the requisition or do you mean that the order is placed by the buyer?

THE COURT: Or do you mean the telephone call is made by the buyer?

THE WITNESS: Well, your Honor, there is no way for me to answer the question. I don't know what transpired at the time. As a matter of fact, if I can state, those orders were not within the realm of my responsibility. It was prior to.It is 1972, and I am not familiar with the working environment or the personnel or who 65 was.

Q You are familiar with these expressions on these requisitions all of which bear the legend or the words confirming order placed by blank and the printed words to your -- they all bear that printed, isn't that right?

A It is a printed form, that is correct.

Q And that printed form was in existence before you were the boss and after you became the manager, isn't that right?

That's correct.

Q What function or role did this line play in terms of what somebody would write down there? Did it have to deal --

A Wait a minute. You see, he has indicated there was a time when he was not in the unit and a subsequent period when he became the manager. I would think if he has knowledge of the practices followed previously, he can say so. If he doesn't, I suggest a fair question would be limited to the period when he became knowledgeable.

MR. FRIEDMAN: Your Honor is right. I intended to limit it to that period.

Q As I understand your testimony and tell me if I am wrong, you say that you can't express any knowledge as to what the practice was before you became the manager in reference to that particular line of the requisition form.

A On this particular form, I can tell you in general terms if that suffices.

Q Well, tell us in general terms the function of that section of the form. That is what I would like to get, to the best of myour knowledge.

A That section of the form is an indication that the order has been confirmed by telephone prior to the receipt of the formal document by the vendor to preclude any duplication of an order. In other words, we have discussed it, you are to go ahead,proceed with the transaction and when our formal paper work arrives, it is of a confirming nature, do not duplicate the order. It is another means of communication.

Q So that when the copy of the -- withdrawn.

Does a copy of the requisition form ultimately go back to the vendor?

A No, sir.

Q Does it go to the using department?

A No, sir.

Q To whose knowledge is this information that the order has been okayed by telephone, to whose knowledge is that supposed to be called, whose attention?

A That particular statement, that particular requisition form is singular in its application. It is used within the confines of the purchasing department.But if I may offer, the information is prestated on the purchase order form when it becomes a purchase order.

When it is in a requisition form, it is an internal document.

Q I can understand that, sir, but to whom would this notation be written? To whom is it addressed?

A Basically, it is addressed from the buyer to the typist to tell her that when you approach that portion of the purchase order format, that you include that information in there. She is merely copying what she sees.

Q Okay.

THE COURT: And then that information is copied onto the purchase order and as I understand it, a copy of the purchase order or the original purchase order, go to the vendor.

THE WITNESS: That's correct, sir.

THE COURT: And I gather from what you said then, the inclusion of that information on the purchase order has two purposes. One, to advise the vendor that this is a confirmation of an oral order and that there aren't in fact two orders, and also to apprise Pan American of the same thing so that there is no confusion.

THE WITNESS: Precisely correct, sir.

MR. FRIEDMAN: Thank you, Judge.

Q On this particular set of documents, where Mr. Hasenstab's name is typed in on the purchase order followed by the designation of the buyer 65/GL, I turn to the third document in the forms. That is the record of telephone quotations, isn't it?

A That's correct.

Q And the buyer on this record is who?

A Mr. Di Napoli.

Q The vendor solicited in Mr. Di Napoli's handwriting as being Tabulating, is that right?

A That's right.

Q I show you the second one, sir, that is a like purchase order, is that right?

A It is a what?

Q A like purchase order.

A Like, yes.

THE COURT: Similar.

Q Similar.

A Yes.

Q And Hasenstab's name is typed in follow ed by the notation 65, looks like GC, it is GC, isn't it?

A That's correct.

Q GC at the reference point on the order, is that right?

And on the requisition form sir, 65 as the buyer is again listed, is that right?

A That's correct.

Q Though Hasenstab's name is written in in ink, isn't that right?

A That's correct.

Q And someone has printed in at the top the name of Tabulating Forms, Inc. as the supplier of the goods, is that correct?

A That's correct.

Q And the next purchase order, sir, does that have Hasenstab's name typed in with the notation 65 NG?

That's correct.

Q And the next one is Hasenstab 65 KS.

A That's correct.

Q And the next one doesn't have any indication on the order form of the reference, is that right?

A Yes, it does.

Q I'm sorry, I didn't see it. That is Di Napoli.

A Yes.

Q And the next one is McAdams?

A That's correct.

Q And then Di Napoli?

A That's correct, too.

Q And the next three are Di Napoli, is that right?

A That's correct.

Q And the fourth one Di Napoli, is that right?

A That's correct.

T2A

Q I show you the balance of the order forms in the second section of this file and the third section of this file and ask you as you look at them to tell the jury whether or not they are substantially similar as to the ones you have already described?

A They are substantially similar as to the ones I have previously described.

Q I would like to direct your attention if I may, to some additional forms which I ask to have marked for identification or even in evidence as Defendant's I.

MR. KINGHAM: May I have a moment, your Honor?

THE COURT: Yes.

(Pause)

MR. KINGHAM: May we approach the side bar?

THE COURT: Yes.

(Side bar)

MR. KINGHAM: With respect to Defendant's Exhibit I for identification, I would simply ask counsel that if these have been removed from the files or copied from the files which were furnished by the government or whether these emanate from a different source. I ask that in light of the fact that we supplied all these documents and there are so many.

MR. FRIEDMAN: These emanate from a different source. Specifically, upon my request, the attorney for Pan American whose name I can supply after I look at my file, furnished me with these documents which comprise a portion of what is called a confidential report, I believe the auditing department of Pan American dealing with the subject matter, purchasing of computer forms, and from that report, I have extracted these pages which comprise this exhibit for identification. I received this about two days ago, I think.

THE COURT: Am I correct, counsel, that the exhibit is a portion of the material with which you were furnished?

MR. FRIEDMAN: That's right, it is a portion of the confidential report sections of which I shall ultimately otherwise introduce into evidence as I proceed or seek to introduce as records kept in the course of business. Of course, I refers to particular orders and these orders are not orders apparently that were in the government's possession or at least were not -- counsel was not aware of them from the government. We only ran across them accidentally by just looking at the report.

THE COURT: I would just comment one thing before we hear from Mr. Kingham. I remind you of your obligations under the government's motion to which I subscribe to your consent and if you recall indicated that although you might have no materials at this time, it would be incumbent upon you to furnish materials to the government as they came into your possession. If these are a portion of certain documents, I just would suggest to the government that they are within their rights, I think, to request the complete set of documents.

MR. FRIEDMAN: I think they are entitled, I think the government is only entitled in my affirmative case to those documents. But whether I am right or wrong, I am willing to let the government inspect what I have. There is nothing secret about it. It is, I represent, what has been furnished to me as a confidential report, I believe, of the -- I think it is called the auditing department. And I will be glad, I have only one copy, it is a fairly fat volume of papers, I would be glad to let counsel look at it. I don't want to hide it.

THE COURT: The reason I say that that you have indicated that you are furnishing a portion of certain materials. One never knows if the portion is representative or not. You have selected them and I presume to assist you in your case. At the same time fairness dictates on the other hand disclosure to the government on a reciprocal basis.

MR. KINGHAM: Your Honor, I would ask that first of all, I will not stipulate these in evidence because they do not come from the documents which we have furnished to defense counsel. Nor have these ever been in our possession that I know of. If counsel wants to put questions to the witness, that is fine.

THE COURT: Very well. In other words, it will be necessary for you through the witness to lay a foundation regarding authenticity and I think that from what I have seen of them, the relevance argument will be the easier of the two. But I suggest that you proceed now to inquire of the witness to see if he can identify the documents.

(In open court)

xx (Defendant's Exhibit I marked for identification.)

THE COURT: You may proceed, Mr. Friedman.

MR. FRIEDMAN: Thank you, Judge.

Q I show you Defendant's I for identification and ask you to look at the first page thereof.

A Yes, sir.

Q Do you recognize that document and tell us what it is?

A That is a blanket purchase order placed with

Tabulating Forms, Inc. dated May 8, 1975, to cover the purchase of a particular type of category of stock form paper.

Q What was the placement date, you said?

THE COURT: May 8, 1975, right, sir?

THE WITNESS: That's correct.

Q That is a copy of the purchase order?

A This is a photostat or Xerox copy, yes.

Q And of course, this is as the other records are, a record kept in the ordinary course of business by the company, is that right?

A Yes, that's correct.

MR. FRIEDMAN: I now ask that I for identification be received in evidence.

THE COURT: Has the witness looked at the entire sheaf of documents there?

MR. FRIEDMAN: He has not Judge, and I will show them to him and perhaps save time.

THE COURT: If you would just indicate if you recognize the balance of the documents which are attached to the cover sheet, I would appreciate your stating whether or not you recognize those documents.

THE WITNESS:Yes, sir. Yes, I do.

Q They are all records kept in the course of business, is that right?

A Yes.

MR. FRIEDMAN: May i ask that they be collectively marked as I in evidence, please.

MR. KINGHAM: May I have a brief voir dire, your Honor?

THE COURT: Yes, indeed.

MR. KINGHAM: Thank you.

VOIR DIRE

BY MR. KINGHAM:

Q Mr. O'Toole, you had an opportunity in the last moment or two to review the documents that Mr. Friedman handed you as Defendant's Exhibit I for identification.

A Yes, sir.

Q And you have testified, I believe, that the first page is a blanket purchase order for a contract for a period beginning in May of 1975, is that correct, sir?

A The order is dated 5/8 but the period is stipulated in the body.

Q But the order is dated May 5th?

A Yes, sir.

THE COURT: May 8th, I believe.

MR. KINGHAM: I'm sorry, May 8th, your Honor, correct.

Q Do you know, sir, where the original papers from which these copies have been made are presently located?

A No, sir.

Q Do you know, sir, if there are -- withdrawn.

I believe you have testified that it is the regular course of business of Pan American in the file section of the purchasing department to maintain files such as those defendant's exhibits which you have identified today, is that correct, sir?

A That's correct.

Q Do you know if there is such a file for these documents dated May 8, 1975?

A No, sir.

Q You do not know or there is no file?

MR. FRIEDMAN: I object to that question, the answer was he didn't know.

THE COURT: I didn't understand the answer and I am going to permit an additional question.

MR. KINGHAM: Thank you, your Honor.

Q Do you know, sir, whether there is a file such as those defendant's exhibits you have earlier identified that is the purchasing department's file copy of the documents which are Defendant's Exhibit I for identification?

A There is no known file on record.

Q Is this in fact, sir, the stock computer paper contract with Tabulating Forms beginning in May of 1975?

A The orders that are in that package, yes.

Q Have you conducted a search of your files at Pan American to determine whether there is a file copy maintained in the purchasing department of this order?

A We have.

Q When was that search conducted?

A It would be between the period February and March of this year.

Q Of 1977?

A 1977.

Q What were the results of that search, sir?

A We were unable to find any records applicable to the particular purchase orders in question. They are unlocateable.

Q Do you know, sir, from what documents these copies were made?

A I don't know, specifically from -- the only copies in existence, well, may I --

Q Perhaps by looking at the document, you can tell which copy -- which file copy of the purchase order or other documents those might be?

A May I answer the question in a statement?

Q Well, let me put the question again so we are clear whatthe question is, sir.

Do you know from what documents or what copy of the purchase order and related documents the copy that is Defendant's Exhibit I was prepared or made?

A The only copies that were available that might bear the stamp completion on it --

MR. FRIEDMAN: I object to this so far, Judge, the statement of were available. He can only testify to what he knows or what he saw.

THE COURT: I will let him answer the question to the best of his ability.

Can you tell us from what copies of these documents Xerox documents which are in front of you now of Defendant's Exhibit I for identification were made?

A In my opinion, they were either made from the finance copy or accounting department copy or possibly the user department or requisition's copy which were not available within the purchasing department.

THE COURT: Let me see if I can understand something.

THE WITNESS: Yes, sir.

THE COURT: I gather from what you just said these documents when prepared originally were prepared in several copies, is that right?

THE WITNESS: There is a master form from which copies are reproduced and based on the typist's indication of copy requirements, those number of copies are produced in set form for distribution. If I may--

THE COURT: The document you have in front of you indicates the number of copies that were prepared, is that right?

THE WITNESS: That's correct.

THE COURT: And how many were they?

THE WITNESS: In addition to the copies per se, four. That would be in addition to the original and acknowledgment, there were four copies prepared, sir.

THE COURT: An original and four copies?

THE WITNESS: Original acknowledgment and four copies.

THE COURT: And in the ordinary course of Pan Am's business, where would those various copies be filed or sent?

THE WITNESS: Well, the copies that were described in the folders which I identified previously were the purchasing department copies which were maintained in a central file location.

THE COURT: So there ordinarily would have been one copy in the purchasing department records, is that correct?

THE WITNESS: That is correct, sir.

THE COURT: Do I recall your testimony of a couple of months ago that you searched the purchasing department records and did not find a copy of this blanket order?

THE WITNESS: That's correct.

THE COURT: Now going on to the purchasing department, where were other copies filed within Pan Am?

THE WITNESS: Well, one copy went to the control unit which was the environment that maintains the incoming requisitions to verify that each requisition is supported by a purchase order in quantity. one would go to the finance department or the accounts payable and disbursements and then as I indicated on the footnote here, one went to in this instance the director of data processing control Rockleigh, the user department. In answer to the question, I am not in a position to make a determination precisely from what copy these were reproduced. I have no specific knowledge, sir.

MR. KINGHAM: I have no objection to the entry of these documents, your Honor.

THE COURT: Received.

xx (Defendant's Exhibit I received in evidence.)

Q Mr. O'Toole, Pan American has an audits division, does it not?

A That's correct.

Q And are you familiar with the name of an attorney employed by Pan American Gregory W. Buhler?

A I believe I have heard the name.

Q Are you familiar with the fact that the auditing division made a report to Pan American, to the company, in connection with the purchase of computer paper forms?

A Yes, sir.

Q Are you familiar with the fact that photostats which you have just been shown were a part of that auditing division's report?

MR. KINGHAM: Objection, your Honor.

THE COURT: Sustained. You will have to go back one question, counsel.

MR. FRIEDMAN: If I must.

THE COURT: Just to lay a foundation. I think that was the basis for the objection.

Q Did you ever look at the auditing division's report?

A Yes, I did, sir.

Q Isn't it a fact that the defendant's exhibit, now in evidence comprised a part of that auditing division's report?

A That's correct, and it did.

Q So that before of course -- withdrawn.

Before you came here today, you had seen this exhibit which I have shown you and you have identified?

A That's correct.

Q This order dated May 8, 1975, bears the reference name N. Di Napoli typewritten, does it not?

A That's correct.

Q Underneath that name the numbers 515-MM, is that correct?

A That's correct.

Q And then in the center of the order, there is an expression "This order issued to cover the procurement of the material listed below for the period of May 15, 1975, through December 31, '76, subject to cancellation by Pan Am at any time without penalty charges," isn't that right?

A I wouldn't agree to that as stated. It reads 1975, sir.

Q 1975 is slashed out with a pen and ink line, isn't that right, and 1976 inserted in handwriting?

A That's correct.

Q At the bottom of this center portion of the form, isn't this as I read it to you, what is present on the form? "Only personnel authorized to activate your services are S. Welger or his designee"; isn't that what appears here?

A That's correct.

Q And S. Welger is the gentleman whom you referred to who works in his finance capacity or whatever it may be, in Rockleigh, New Jersey, is that right?

A That's correct.

Q In fact, this order is characterized by its definition or the term extended purchase order, isn't that right?

A Covers a commitment for a period of time, that's correct.

Q Then personnel, according to this report by the name of Welger or his designee, would be the ones who wou order the goods and activate that order, is that right?

A He would not effect the order, he would effect the releases against it, he would effect the withdrawals in quantity on demand, that's correct.

Q When you say effect releases, are you saying that he would either write or telephone to somebody and say "All right now, ship us the goods"; is that right?

A That's correct.

Q And this order form for this extended purchase order then by at least the language on the order was under the control of Welger, is that right?

A That's correct.

MR. KINGHAM: Objection, your Honor.

THE COURT: Sustained. Strike it.

Q The form indicates that Mr. Welger was to be the one to activate the order or his designee, is that right?

e 2B p.m. hblt 1 O'Toole-cross

MR. KINGHAM: Asked and answered, your Honor, and the form speaks for itself.

THE COURT: Yes. Sustained.

Let me clarify one thing:

After the blanket purchase order was issued, did the user deal directly with the vendor to obtain quantities of -- in this case, computer paper, or did the user deal through your department?

THE WITNESS: In this particular application, once the purchase order had been processed and formalized, then the releases or the quantity requested periodically, whatever they may have been, weekly, semi-monthly, whatever, were actually authorized and were drawn by Mr. Welger or his designees.

THE COURT: What I would call the user?

THE WITNESS: That's correct, sir.

THE COURT: And that means that the user could drawn down against the order up to the amount of the order or I think it was in some 10 percent overage which would be permitted; is that correct?

THE WITNESS: This order did not stipulate that, sir.

THE COURT: Oh, it did not. So then am I correct that the user, once the order had been finalized, the user could authorize shipment up to the quantity in the blanket order?

THE WITNESS: If I may, there is no quantity on this blanket order, sir.

THE COURT: This was an open quantity?

THE WITNESS: If I am correct.

Q Would you like to look at it?

A Yes, sir.

There is no stated quantity, it merely offers a period of time.

Q In other words, it could be an unlimited quantity as long as the material was ordered; as long as it was within the one year, covered by the order?

A If I may say, it was initially for a specific period and then extended.

Q And there was no limitation on the amount, just as long as it was drawn out within the period?

A There is no indications otherwise; that's correct.

Q And on the second pageof this exhibit, sir, there is a supplement to the order; is that correct?

A That's correct.

Q That is, the second page refers to the same purchase order date, 5/8/75 and it has an order number.

A Correct, sir.

Q And Tabulating is the vendor.

A Correct, sir.

Q And here the reference is J. Mardoza.

A That's correct.

Q And there is a supplement issued and it says to extend the procurement period to December 31, 1976; is that right?

A That's correct.

Q Is there language here indicating "Reason updating requirement;" is that correct?

A That is correct.

Q And then there is an additional page which is another supplement; is that right?

A That's correct.

Q And now we come, sir, to another purchase order form which is part of the exhibit, which is dated 12/17, and I believe it is '76, -- you take a look at it.

A You say '76?

Q Yes, would that refer to '76?

A I would say otherwise.

THE COURT: '75?

THE WITNESS: I would say 12/17/75.

THE COURT: Very well.

Q All right.

Now, that order is one to Tabulating Forms also, is it not?

A That's correct.

Q And the reference name indicated there, the name of the buyer, is J. Mardoza?

A That's correct.

Q And at the bottom of the order, "Description."

Withdrawn.

The material ordered is for the period December 1, '75 to December 31, '76, subject to cancellation by Pan Am at any time without penalty charges; isn't that right?

A That's correct.

Q And at the bottom, does not the form read, "Only personnel authorized to activate your services are Sol Welger or his designee"?

A That's correct.

Q And then under date of 5/7/75, there is a like purchasing order, isn't that true?

A That's correct.

Q And that purchasing order covers the period according to the typing on the form of May 15, '75 through December 31, '75, according to the typewritten word, but '75 is stricken out and someone has inserted the inked notation

"1976," is that correct?

A That's correct.

Q And at the bottom of that order form it reads:

"The only personnel authorized to activate your services are S. Welger or his designee," is that right?

A That's correct.

Q And the price of those goods is set forth on the order form, is that right?

A Correct.

Q Now tell me, please, these orders, these extended purchase orders, resulted in a shipment in 1975 and 1976 by Tabulating to Pan American of a very substantial quantity of paper goods; isn't that correct?

A Correct.

Q And as a matter of fact, it was this open order that was to be activated upon the authorization of Mr. Welger which in fact accounted for a substantial if not overwhelming portion of the increase of business that Tabulating did with Pan Am.

MR. KINGHAM: Is that the question?

Q During 1976 and 1975, is that correct?

MR. KINGHAM: Objection, your Honor, to the characterization.

THE COURT: Sustained.

Q Are you familiar, sir, with the volume of business that Pan Am did with Tabulating during the year 1975 and 1976?

A Not 1975. Yes, 1976.

Q What was the volume of business that Tabulating did with Pan Am in 1976?

A In excess of $400,000.

Q What part of that business was represented by this open order contract?

A I don't know, sir.

Q You indicated that you had read the report of your auditing division; did you not?

A That's correct.

Q Is it not true that your auditing division suppli within its report computations dealing with the amount of dollar volume of the business that was represented by this extended order contract?

MR. KINGHAM: Objection to the line, your Honor. I see where it is going.

THE COURT: Yes, it is not going to go anywhere unless you have the report. You can't ask him what he read in the report to get it out. You know that. You can ask this question, but it is not going to get you the answer that you're seeking.

(Pause.)

MR. FRIEDMAN: Excuse me, Judge.

THE COURT: Certainly.

Q Have you had occasion, sir, to look at Pan Am records insofar as they represent payments to Tabulating Forms for products supplied under this order that I have described?

A I have no direct application to invoice or payments, but in the course of the report that you speak of, there were various documents which I did not associate with or identify, but they do reflect payments.

But specifically, other than the fact that they are part of the report, I am not in a position to be familiar with the financial aspect.

Q Would you look, sir, at this set of papers, and tell me --

THE COURT: No. Mark it for identification unless it has already been marked. You can show him anything, but before you do, just mark it.

(Defendant's Exhibit J was marked for identification.)

THE COURT: You can look at Defendant's Exhibit J for identification, a set of papers to which reference was made a moment ago, and counsel will ask you a question.

Q Looking at those papers, sir, is that not the report of the division of audits which you say you had an opportunity to look at before you came to this court?

A Yes, sir.

Q And that is a repor[illegible]ch you have previously read?

A Yes.

Q And that is a report which contained the last exhibit which I have asked you to describe in some detail and which you have indicated were records related to an extended purchase order or orders, right?

A Yes, sir.

Q Will you look through that report, sir, and see whether or not you can find anything in there which refreshes your recollection as to what portion of Tabulating Forms' business in 1976 was represented by that extended order which you have just described in the last exhibit?

MR. KINGHAM: I object, your Honor. Foundation.

THE COURT: Sustained.

You have to determine whether he had an initial knowledge or recollection. Then of course if he did and he doesn't recall now, you can show him that. But you do have to go back to your predicate.

Was that the basis of your objection?

MR. KINGHAM: It is, your Honor, exactly. Foundation.

THE COURT: Very well.

Mr. O'Toole, do you have any recollection of ever having known of the dollar amount of sales which Tabulating Forms made to Pan Am during the year 1976? Would you answer that yes or no, if you can?

In other words, did you know the information of y own knowledge or from any source at any time?

THE WITNESS: Only from the report, sir.

THE COURT: First time you learned of it was from the report?

THE WITNESS: That's correct.

MR. FRIEDMAN: I am not sure I know what your Honor's gesture means: Yes, no or maybe?

THE COURT: I have gone about as far as I can to help you. That's about the size of it.

MR. FRIEDMAN: Maybe you can help me a little more.

Q I show you this page, sir.

MR. KINGHAM: May we have that marked, your Honor?

THE COURT: Yes. That will be Defendant's K.

(Defendant's Exhibit K was marked for identification.)

xx

THE WITNESS: Your Honor?

THE COURT: Yes.

THE WITNESS: May I ask a question?

THE COURT: No, you had better not. Counsel wants to ask the questions.

Q I will ask a question and I have a copy of the page here.

As a matter of fact, sir, look at page 1 of this report to which I direct your attention, and you see here in this report --

THE COURT: Don't read it to him, but you can let him look at it.

Q Do you see these numbers here, sir?

A Yes, I do.

Q Does that refresh your recollection as to the percentage increase of Tabulating Forms' business by which it was increased in 1976 with Pan Am?

MR. KINGHAM: Same objection, your Honor.

THE COURT: Sustained.

You are going to have to go back to see if he had any knowledge. If he doesn't recall, if he had it and he can't recall it now, that can be used to refresh his recollection. I don't think the record is clear that he originally had the knowledge. That is the basis of your objection; am

I right, Mr. Kingham?

MR. KINGHAM: Same objection, your Honor, that's correct.

Q Did you, from looking at documents, did you from reading documents relative to Tabulating's business with Pan Am in 1976 --

THE COURT: Before you ever saw this report.

Q -- before you saw this report, did you acquire any knowledge as to what those business records showed concerning Tabulating's business in 1976 with Pan Am?

A No, sir.

Q Did you at any time after or while you looked at this report, look at any other documents which would indicate the amount of business Tabulating did with Pan Am in 1976?

A '76?

Q '76.

A Yes.

Q What documents did you look at?

A A computer printout which highlights both by -- there are two reports. One alphabetically by the vendor as to the dollar amounts expended and one by high to low dollar value expended to the specific company in dollar decreasing orders.

Q That computer print-out, I assume, is made from a input related to Pan Am records?

A That's correct.

THE COURT: Did you make the input into the print-out?

THE WITNESS: No, sir.

Q Do you know who did?

A Well, it is a product of Data Systems' management; the output is by Data Systems' management. Who inputs, I specifically don't know. I could assume it would be the responsibility of the director of disbursements, responsible for funding or payments for any source for material and services.

Q Did you look at any computer print-out which showe the percentage business that Tabulating did with Pan American in 1976 that was represented by this extended purchase order which you have described?

A Computer print-out? No, sir.

Q Did you look at any documents other than the auditing report?

THE COURT: He has held up the auditing report.

A No, sir.

Q That auditing report would be made up by what particular personnel?

THE COURT: If you know.

A It would be made under the responsibility of the vice president audits and security?

Q And beyond that, sir, do you have any knowledge of who specifically would have the raw data which was used to compile that report for the Division of Audits?

A It would be the lead auditor who was responsible to his management for the conduct of the audit.

Q Do you know his name?

A The lead auditor?

Q Yes.

A Mr. Robert Anton. However, the cover sheet, which has disappeared, is under the signature of somebody else.

Q By the cover sheet, you mean the one that has the Court's Exhibit marking on it, J?

A Yes, sir.

Q You mean Mr. R.J. Guarnieri,General Auditor?

A Well, yes.

Q Do you know Mr. Guarnieri?

A Yes, I do.

Q As a matter of fact, do you know that Mr. Guarnieri has been out of New York for the last few days?

A No, sir, I don't know that.

Q You don't know that?

A No, sir.

Q Were you able, sir, or did you have the opportunity, sir, to look at any Pan Am documents which would reflect the quantity of goods that were shipped under this extended purchase order in 1976 besides what is in the auditing report?

A No,sir.

Q From the auditing report, sir--

A Could you please speak up, sir?

THE COURT: I can't hear you either.

Q From the auditing report, I show you a group of papers which are marked in the lower righthand corner as Appendix D.

A Yes, sir.

MR. FRIEDMAN: I ask that these be marked for identification.

THE COURT: They will be.

J-1, I suppose, because they apparently are an appendix to J.

MR. FRIEDMAN: Yes, sir.

THE COURT: J-1, some papers.

(Defendant's Exhibit J-1 was marked for identification.)

MR. FRIEDMAN: That is how the notation is on the exhibit itself, Appendix D.

THE COURT: I understand.

MR. FRIEDMAN: I show it to counsel.

THE COURT: Mr. Kingham?

MR. KINGHAM: I don't know what counsel is going to do with them,your Honor.

THE COURT: He has offered them.

MR. KINGHAM: I didn't know that they have been offered.

MR. FRIEDMAN: I didn't really offer them, but the Judge read my mind. I didn't offer them.

MR. KINGHAM: No objection.

THE COURT: Received.

(Defendant's Exhibit J-1 was received in evidence.)

Q Am I correct, sir, that this group of documents, on this group of documents, the first one is dated 2/23/77, is that right?

A That's correct.

Q And the material which is the subject of this order is described as from January 1, '77 through December 31, '77; is that correct?

A That is correct.

Q And again, there is a restriction that the services are only to be authorized by Mr. Welger or his designee?

A That's correct.

THE COURT: What were those dates again, counsel?

MR. FRIEDMAN: January 1, '77 to December 31, '77.

THE COURT: No, the date of the document.

MR. FRIEDMAN: 2/23/77.

THE COURT: Thank you.

Q And lastly, I think, sir, I show you a group of documents which I ask to be marked as J-2.

(Defendnat's Exhibit J-2 was marked for identification.)

MR. FRIEDMAN: And which I offer into evidence.

THE COURT: Is that another appendix?

MR. FRIEDMAN: Yes, Judge. That is an appendix taken from the audit division report which the witness has identified.

THE COURT: Having borne the appendix number what? I just want to keep the record.

MR. FRIEDMAN: B as in boy, your Honor.

THE COURT: All right.

MR. KINGHAM: I have no objection, your Honor. I think the record should be clear, however, that J is not in evidence, and that these specific sub-parts are being admitted only under their sub-numbers.

THE COURT: It is clear to me. That's correct. That is why I inquired if these were appendices and they bot were and so far we have admitted what had been Appendices D as J-1 and B and J-2. Other than those appendices, it remains for identification.

MR. KINGHAM: Thank you, your Honor.

(Defendant's Exhibit J-2 was received in evidence.)

THE COURT: Do you wish to show that to the witness, counsel?

MR. FRIEDMAN: Yes, please, sir.

Q Is the first page of this document, sir, a purchase order copy?

A Yes, it is.

Q Is the reference name McAdams?

A Yes, it is.

Q That is the buyer?

A That's correct.

Q And this is dated 11/21/74.

A Yes, it is.

Q And this is for an order to commence according to the document, 1/3/75?

A That's correct.

Q And it is indicated on the form that the confirmin order was placed by telephone on 11/15 -- that this is confirming the order placed by telephone on 11/15/74 to Mr. O'Brien?

A That's correct.

Q And the goods are to be shipped to the Rockleigh facility of Pan Am to the attention of S. Welger?

A That's correct.

THE COURT: Counsel, you indicated an opening date of January 3, 1975.

Just so the record is straight, is there a closing date?

MR. FRIEDMAN: No, sir, not on this form. Not that I see. Maybe the witness can see.

A What is the question?

Q Whether or not there is a closing date on the form.

A No, sir.

Q Then under this first page is a supplementary purchase order, is that right?

A That's correct.

Q That supplementary purchase order has as the purchasing agent listed A. McAdams, is that right?

A That's correct.

Q And this supplement is directed to Moore Business

Forms as the vendor, is that right?

A That's correct.

Q And the indication on the form is that this was done to cover additional usage, is that right?

A That's correct.

Q But the order number involved on the supplement is the same as the order number on the first document; is that right?

A That's correct.

Q So that apparently, the user department requested additional documents of this type.

THE COURT: Additional materials.

Q Additional material of this type, I'm sorry.

Is that right?

A I can't specifically answer the question as stated.

THE COURT: Do you know the reason for the issuance of the supplementary purchase order?

THE WITNESS: The reason indicated is to cover additional usage. This, if I may, this order, in lieu of a time frame, was for a specific quantity. We have the option of an overrun and the supplement was issued to increase the quantity. But to clarify, the quantity shipped and billed, but I cannot -- many people use different terminology meaning the same or different things, but the specific question to cover additional usage leaves me up in the air. I can't go back to 1974 and say what was in somebody's mind; what they said or what they meant or what in fact was actually happening.

THE COURT: Again to clarify, this is something that I don't understand.

Mr. Friedman indicated that the two documents that he showed you, the original purchase order and the supplementary purchase order, bore the same number, is that correct?

THE WITNESS: That is correct.

THE COURT: Do the records indicate the same supplier or vendor?

THE WITNESS: On the original copy the vendor is not shown, but we can assume since everything is in agreement, that it was as stated on the supplement and since the named party was in my opinion with that firm at that time, I assume that it was the vendor stated on the supplement, Moore.

MR. FRIEDMAN: Thank you, Judge.

Q Now, sir, you say that many people use different words for different meanings. Of course, that is very true.

Now this expression, Mr. O'Toole, to you as a manager of this department, the expression "to cover additional usage," what other possible meaning would you think, in your experience as a manager, that expression can have other than to cover additional usage?

MR. KINGHAM: I object, your Honor.

THE COURT: Sustained.

Q Is there something truly confusing to you about the words "to cover additional usage" so that you are unable in your capacity as manager of this department to tell us what that means in the course of your business?

MR. KINGHAM: I object. Argumentative.

THE COURT: Sustained.

Q Does it have any meaning to you as manager of this department?

MR. KINGHAM: Objection. Asked and answered by your Honor.

THE COURT: I thought it was too, but if it wasn't, I will let the witness answer it again.

Q Does it have any meaning to you?

A May I make an explanation?

Q Just tell us if it has a meaning; yes or no.

THE COURT: If you can answer the question yes or no, say so. If you cannot, indicate to counsel that you cannot answer his question yes or no.

THE WITNESS: I cannot answer his question yes or no.

Q During the course of your -- either speaking to the federal agent or perhaps if you spoke to the U.S. Attorney, whatever was done in reference to your coming into this court, did you happen to see a personnel file from the company relating to Mr. Hasenstab?

A No, sir.

Q In reference to your testimony relating to the so-called conflict of interest statement, you recollect that testimony, do you not?

A Yes, sir.

Q ISn't it true that on at least one occasion you were requested by your superiors to send in your form because you had not sent it to them in what was considered timely fashion?

A That is correct.

Q When was that?

A Specifically, I don't know, but it would be some time in the early part of 1977.

Q Did someone from Audits and Security contact you and ask you to send it in?

A Yes, I believe they did.

MR. FRIEDMAN: I think that's all of this witness, Judge.

THE COURT: Mr. Kingham?

MR. KINGHAM: Thank you, your Honor.

REDIRECT EXAMINATION

BY MR. KINGHAM:

Q Mr. O'Toole, what did you do when Audits and Security asked you to submit your 1976 conflict of interest form?

A '76 sir?

Q To be sent in for 1977, the 1977 form.

What did you do?

A I filled it out and processed it.

Q Send it in?

A Immediately.

Q Do you recall being asked questions by Mr. Friedman, and I believe my Judge Ward during your cross examination concerning the number of copies of purchase orders that would be prepared? Do you remember being asked questions about that?

A Yes.

THE COURT: Particularly when we were discussing those blanket purchase orders; you recall that?

THE WITNESS: Yes.

Q Do you recall being asked questions about the number of copies that would be sent to the vendor?

A Yes, sir.

Q How many copies would be sent to the vendor?

A Well, it is two, comprises an original and one white, two copies, an original and one white copy. The copies are to be confused, but two copies.

Q And how would they get from Pan American to the vendor, in your experience?

A By mail.

Q Mr. O'Toole, are you familiar with the term "a covered employee" at Pan American?

A Yes, [illegible] am.

MR. FRIEDMAN: I object to the question.

THE COURT: Overruled.

Q What is a "covered employee" sir?

A A covered employee is an employee who is covered by a union contract.

Q Do you know Mr. DiNapoli?

A Yes, sir.

Q Do you know Ms. McAdams?

A Yes, I do.

Q How about Mr. Cordano?

A I do.

Q Mr. Mcrdoza?

A Mardoza, yes.

Q Mardoza.

Do you recall being asked questions by Mr. Friedman as to whether or not these people were buyers or are buyers at Pan American?

A Yes, I do.

Q Are they buyers?

THE COURT: Are they or were they.

Q Or were they.

A They are and were.

Q Do you know if any of those four people are or were covered employees; that is, employees who are members of the union?

A They are and were.

Q Are you, sir, a covered employee?

A No, I am not.

Q During the time that he was a supervisor with Pan American, was Mr. Hasenstab a covered employee?

A No, he was not.

Q Are you familiar, sir, with the practice and procedure at Pan American with respect to the duties of covered employees as they relate to the paper work that you have testified about for the past two days?

A The work described is considered productive work, and is restricted to be accomplished by covered employees.

Q Which work do you mean, sir?

A The routine processing of requisitions, requests for quotations, and related aspects of the position in the formulating of the purchase order.

Q Mr. O'Toole, calling your attention first to Defendant's Exhibit J-2 in evidence, which I believe you testified were some documents relating to Moore Business Forms; is that correct?

A Yes.

Q And calling your attention to Government's Exhibit I -- I'm sorry, Defendant's Exhibit I in evidence, some documents relating to Tabulating Forms, Inc.--

A Yes.

Q First of all, with respect to Defendant's Exhibit J-2, the Moore Business Forms document, are those contracts or purchase orders for stock computer paper to be used at Rockleigh?

A That's correct.

Q What is the date covered, or the dates covered, by the purchase order that is Defendant's Exhibit J-2? What dates does that cover?

A Are you referring to a period of time?

Q Yes.

A It is not stipulated.

Q When does it begin?

THE COURT: January 3, 1975, isn't it?

THE WITNESS: That's correct.

Q Is that the effective date of the contract, sir?

THE COURT: That was his testimony.

Is that right?

THE WITNESS: Yes, sir.

Q Do you know if that contract terminated or ended at any particular time?

A I don't know the specific answer to the question.

Q Can you tell from looking at those documents?

A If I am to read into it and assume --

MR. FRIEDMAN: I object.

THE COURT: No, we don't want you to assume. We just want you to tell us if you know. If you know, tell us. If you don't know, tell us you don't know.

A Could you repeat the question?

Q Do you know, sir, or is it reflected in the documents, when that purchase order or contract for computer paper terminated or ended with Moore Business Forms?

A No, I don't know, sir.

Q Look at Defendant's Exhibit I in evidence, if you would, sir.

I believe you testified that that is an order to Tabulating Forms, Inc., also for computer paper; is that correct?

A That's correct.

Q I believe you were asked questions about when that began and ended and it began in May, early May of 1975 and was extended to continue until the end of 1976; is that correct, sir?

THE COURT: Actually, weren't there more than one and didn't they begin on May 15, 1975?

THE WITNESS: They had various starting and ending dates, sir. There are numerous orders here and the dates may vary.

THE COURT: As I remember your testimony, the dates were May 15, 1975 for a couple and December 1, 1975 fo one. How many purchase orders are in on it, three? Four? I think three.

THE WITNESS: Four, sir.

T3B pm

Q What are the beginning dates of each of them?

A Okay. You want them by order number or just generally, sir?

THE COURT: I think they should be identified in the record.

MR. KINGHAM: That is what I was unclear about, your Honor, I'm sorry.

A Purchase order S383880B5 commenced May 15, 1975, and was extended through December 31, 1976.

THE COURT: Having been extended as I understand it, from December 31, 1975.

THE WITNESS: That is correct, sir.

THE COURT: Very well. All right. That is the first of the four. Second.

THE WITNESS: Purchase order S38435OB5 covered a period December 1, 1975, to December 31, 1976. Purchase order S38389OB5 was issued effective May 15, 1975, and extended through December 31, 1976. Purchase order S384360B5 was issued for the period December 1, 1975, to December 31, 1976.

Q Mr. O'Toole, with respect to the documents that are in Defendant's Exhibit I, that is the Tabulating Forms documents, the purchase orders relating to Tabulating Forms, are there any bid quotation sheets in that package of documents?

A I didn't hear you, sir.

THE COURT: Are there any bid quotation sheets contained within Defendant's Exhibit I in evidence?

THE WITNESS: No.

Q To your knowledge, were competitive bids taken by Pan American on the purchase orders which are reflected in Defendant's Exhibit I?

A I don't know, sir.

Q Would you look at Defendant's Exhibit J2, please, are there any bid quotation sheets in that package of documents, that is Defendant's Exhibit J2.

A No.

Q To your knowledge, were any competitive bids taken prior to the execution of the purchase orders that constitute Defendant's Exhibit J2?

A My recollection, and the audit file in certain orders, I believe there were, sir.

Q As to J2, is that correct?

A That's correct.

Q And that is the order for Moore business forms?

A Yes.

Q Let me show you Defendant's Exhibit J1 in evidence. Those purchase orders relate to a company called Bregg Data Systems, do they not?

A Yes, they do.

Q I believe you testified in answer to questions by Mr. Friedman, that the purchase orders reflected by Defendant's Exhibit J1 begin in February, 1977, is that correct, sir?

A The order is dated February, the effective date was January 1st.

THE COURT: It was January 1st, wasn't it?

THE WITNESS: Yes.

THE COURT: And it was supposed to be for the period January 1st through December 31, 1977, isn't that correct?

THE WITNESS: That's correct, sir.

Q Is that for the same commodity and type of paper as is reflected in Defendant's Exhibits I and J2?

A Yes.

THE COURT: That is, it is an order for the same type of paper, is that correct?

THE WITNESS: Yes, it is.

Q To your knowledge, sir, were competitive bids taken by Pan American with respect to the order to Bregg Data Systems reflected in Defendant's Exhibit J1?

A Yes, they were.

Q How do you know that, sir?

A I had the opportunity to see the file and review them.

MR. FRIEDMAN: I move to strike the answer, Judge, unless the witness is referring to these documents. Otherwise he is referring to a writing not here.

THE COURT: What about that, counsel?

MR. KINGHAM: I think the witness is content to testify to that, he is the manager of the unit in which these contracts obviously were entered--

THE COURT: If he is only referring to documents that he read, I will strike it. If he knows it of his own independent knowledge, I would let it remain. Therefore before I rule, I will permit you to ask one additional question.

Is that agreeable, Mr. Friedman?

MR. FRIEDMAN: Yes, Judge.

Q Mr. O'Toole, did you solicit bids from vendors with respect to the purchase order that is Defendant's Exhibit J1?

A I personally?

Q Yes.

A No, sir.

Q Do you know who did?

MR. FRIEDMAN: I object. There has been no testimony yet --

THE COURT: Do you know who if anyone?

Q If anyone.

THE COURT: If anyone who did. Just answer yes or no.

A Yes.

Q Who was that, sir?

A Mr. Di Napoli.

THE COURT: I will strike the answer at this time. Of course, I will permit you to introduce whatever appropriate proof you can introduce at any other time.

The jury will disregard the answer given by the witness that bid quotations were taken from Bregg Data Systems because it has been established that the witness did not have personal knowledge of this. Therefore, that particular answer will be stricken and disregarded by the jury. If the government should come in with other evidence, then they will present it at an appropriate time.

MR. KINGHAM: Thank you, your Honor.

Just a couple of brief questions in conclusion if I may, your Honor.

Q Mr. O'Toole, do you recall being asked questions about the documents which are in Defendant's Exhibits A through H in evidence, those articles?

A Yes.

Q As well as the documents that are in Defendant's Exhibits I, J1 and J2 with regard to notations about Saul Welger?

A Yes, I did.

Q Do you recall being asked those questions, sir?

A Yes.

Q And specifically, sir, do you recall being asksed, using as an example, Defendant's Exhibit I, do you recall being asked questions about the following phrases and about a quote "Only personnel authorized to activate your services are S. Welger or his designee." Do you recall being asked those questions, sir?

A Yes, I do.

Q With respect to those questions, who at Pan American is responsible for obtaining the prices or the bids for purchase orders such as Defendant's Exhibits I, J1 and J2 reflect?

A The buyer.

Q What function if any does Mr. Welger have with respect to the prices or bids for the goods that are purcahsed by those exhibits?

A None.

Q What is Mr. Welger's function with respect to the goods that are purchased by those exhibits if you know?

A What is his function?

Q With respect to the goods that are purchased, the purchase which is reflected by those exhibits.

A They vary with respect to the exhibits.

Q Well, take Defendant's Exhibit I in evidence, please, if you would.

A In this instance, there is no specific quantitative or scheduled delivery of the product on a routine basis, therefore in this instance, in the Exhibit I, Mr. Welger is authorized to direct the vendor to ship the specified quantities to meet his requirements.

THE COURT: In other words, he is authorized to draw down against the order?

THE WITNESS: That's correct, sir.

MR. KINGHAM: I don't believe I have anything further, your Honor.

THE COURT: Very well.

Mr. Friedman.

MR. FRIEDMAN: I'm sorry, Judge, I was conferring with my client.

THE COURT: Mr. Kingham has completed his redirect examination. I would ask if there was any recross.

MR. FRIEDMAN: Was there an answer to the last question?

THE COURT: Would you read the question and answer, please, Mr. Reporter.

(Record read)

RECROSS EXAMINATION

BY MR. FRIEDMAN:

Q And the drawing down by Mr. Welger against the order would be at the prices which are set forth on these varying order forms, is that right?

A In I, sir?

Q In J or I, is that right?

A Well, as I indicated in my last response, only this order--

THE COURT: Indicating?

THE WITNESS: As a draw down. The other categories are scheduled quantities as stipulated on the order.

Q So that then confining your answer, confining my question to I, that open order would be exercised drawn against at the price set forth in the order?

A That's correct, sir.

MR. FRIEDMAN: Thank you. That is all.

THE COURT: Thank you.

Ladies and gentlemen, I think this would be a good point at which to take our afternoon recess. Please do not discuss the case among yourselves, keep an open mind on all facets of the case until the case has been completed and given to you following my charge. There will be a ten-minute recess and then we will proceed to the end of the afternoon.

(Jury departs)

MR. KINGHAM: Your Honor, may we excuse the witness?

THE COURT: There was just one matter I wanted to take up.

Mr. O'Toole, this doesn't have to do directly with you, but it is my understanding that the defendant is in the process of serving upon Mr. Welger over at Rockleigh, New Jersey, a subpoena to require Mr. Welger to bring certain records of Pan American World Airways to court in connection with this case. The subpoena specifically calls for Mr. Welger to bring with him all records of Pan American World Airways relating to all transactions by Pan American with Tabulating Forms, Inc. indicating requisition and purchase order files, invoices and receiving reports. I am bringing this to your attention to ask your cooperation to make a telephone call to Rockleigh so that when as and if the subpoena is received, it can be complied with. If you would like to make a note of this, you may do so.

THE WITNESS: May I make a statement?

THE COURT: Yes, the jury is not here, you may make a statement.

THE WITNESS: During my absence yesterday, a subpoena was directed to my attention but not processed because of my absence and in a similar fashion, and I don't know what the disposition of that is.

THE COURT: All I am asking you to do at this point is to lend your assistence so that if humanly possible, the subpoena which has been presented to the court by the defendant can be complied with.

THE WITNESS: I am sure there will be a coordinated effort.

THE COURT: Very well, I ask you to cooperate in that.

THE WITNESS: Very well, sir.

MR. FRIEDMAN: May we indicate that the subpoena has in fact been served on Mr. Welger.

THE COURT: I don't know that this witness would know that.

MR. FRIEDMAN: I am saying that. I am telling you now so that you will know that he was served last night.

THE COURT: I see.

MR. FRIEDMAN: And is aware of the necessity for the production of those records.

THE COURT: What I am doing here is that since Mr. O'Toole is obviously a responsible official of the company and he is here, I am merely asking him to assist in seeing to it that the subpoena is complied with.

THE WITNESS: If I may, my director was also served and he has been in the process of assisting.

THE COURT: Thank you.

THE WITNESS: Are there any instructions for me, sir?

THE COURT: No, only that I would ask, I think you have done everything that we could expect or your company is in the process of doing, I would only ask that whatever process is served upon the company albeit on short notice be complied with to the greatest possible within the shortest time possible.

THE WITNESS: I meant my instructions relative to my appearance here.

THE COURT: You are excused. Thank you. We will take a short break.

T4A

(Recess)

(In open court, jury present.)

THE COURT: Mr. Kingham, please call your next witness.

MR. KINGHAM: Government calls Nicholas Di Napoli.

NICHOLAS Di NAPOLI, called as a witness, having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. KINGHAM:

Q Mr. Di Napoli, I would ask you to keep your voice up so that you can be heard here in the back of the courtroom. Would you do that for me, sir?

A Yes, sir.

Q Do you work at Pan American World Airways Incorporated?

A Right.

Q How long have you worked there, sir?

A Approximately 13 years.

Q What is your present position at Pan American?

A Buyer.

Q Have you been a buyer for all of your employment with Pan American?

A Junior buyer, then buyer.

Q In what buying unit are you presently assigned?

A Buying unit 5.

Q Is that the unit that Mr. O'Toole is the manager of, sir?

A Correct.

Q What are your duties as a buyer and in buying unit 5?

A Distribute requisitions to various buyers and then accomplish my own work such as buying whatever I have on my desk.

MR. FRIEDMAN: Excuse me, I can't hear.

THE COURT: He said his duties include distributing requisitions to various buyers and then taking care of the buying which is placed on his desk, is that a fair statement of what you just said, sir?

THE WITNESS: Correct.

THE COURT: Very well.

Q What type of commodities are you personally responsible for purchasing?

A Printed, stationery and various other oddball commodities.

Q And who was responsible for the purchasing of printed business forms, sir?

A Various, I should be buying them, but if it is a contractual basis, it is the supervisor.

Q Do you know William Hasenstab?

A Yes, I do.

Q Do you see Mr. Hasenstab in the courtroom now, sir?

A Yes, I do.

Q Would you point him out?

A The gentleman sitting with the glasses in the light suit.

MR. FRIEDMAN: We will concede the identification.

THE COURT: It is indicated and conceded that the defendant is identified and knows Mr. Hasenstab.

Q How long have you known Mr. Hasenstab, Mr. Di Napoli?

A Approximately the full 13 years.

Q When you first came to work at Pan American, do you know what Mr. Hasenstab's job was?

A At that time he was a buyer.

Q Did there come a time when he became your supervisor?

A Yes.

Q When was that, sir?

A About three, four months after my coming to Pan American, approximately.

Q Are you familiar with Mr. Di Napoli, with the purchasing and requisition system which is used by your unit for the purchasing of business forms?

A Yes.

Q Can you describe the system that in your experience has been used in your unit for the purchasing of printed business forms?

A When you say "printed business forms," which ones are you referring to?

Q What type of business forms do you purchase?

A You mean -- well, they are sent out on written quotes and then as we get -- as we get our quotes, then we write up the order to the lowest bidder.

Q Who obtains the quotes from the vendor?

A The buyers.

MR. FRIEDMAN: I withdraw the objection.

THE COURT: Very well. The buyer?

THE WITNESS: YEs, sir.

Q What do you as the buyer do after you have obtained the quotes?

A Write up the requisition as a purchase order.

Q Then what do you do with them?

A Put it in an outgoing tray.

Q Where does it go if you know?

A Then from there, the supervisor sends them through to its processing.

Q Are you familiar with a vendor called Tabulating Forms, Inc.?

A Yes.

Q Who was the representative of Tabulating Forms, if you know?

A Mr. George Barney.

Q In your experience, was the system you have just described used for Tabulating stock forms?

A Mostly, no.

Q How were the requisitions for forms which were placed with Tabulating stock forms handled?

A Those that I didn't handle were given to me and told to write up.

Q Who did that, sir?

A My supervisor.

Q Who was that?

A Mr. Hasenstab.

Q During what period of time did that practice go on?

A Last four or five years.

Q Was that practice -- withdrawn, your Honor.

Was that system practiced with respect to any other vendors?

A Not that I recall.

Q What percentage, Mr. Di Napoli, if you know, of the purchase orders for Tabulating stock forms were handled in the way you have just described?

A Approximately 60 percent.

Q Let me show you, sir, Government's Exhibit 2 in evidence. Do you want to put your glasses on and take a look at that, sir.

A Yes, sir.

Q Do you recognize the documents that are contained in Government's Exhibit 2 in evidence?

A Yes, I do.

Q That is a purchase order and some related documents, is it not, sir?

A Right, sir.

Q Does your name appear anywhere on those documents?

A As the finished signature, please refer to.

Q Does your handwriting appear anywhere on any of those documents?

THE COURT: Did you look at all of them.

Q Look at all the pieces of paper.

A On the quotation sheet and part of the text of the requisition itself.

Q From looking at your handwriting and the form of those documents, can you tell the ladies and gentlemen of the jury how that purchase order and requisition was processed?

A This was a confirmation placed by telephone on 6/21 to Mr. Barney.

Q Do you know who made that confirmation?

A By the handwriting, I would assume it was Mr. Hasenstab.

Q Do you recognize Mr. Hasenstab's handwriting?

A Yes, I do.

Q Have you become familiar with it during the 11 or 12 years of your acquaintance?

A Yes, I have.

Q Calling your attention to the quote sheet. Would you hold that up so the ladies and gentlemen of the jury can see which piece of paper we are talking about? That is the one with the three columns, is that correct?

A Correct.

Q Whose handwriting is on that quote sheet?

A That is mine.

Q And what does thatquote sheet reflect, sir?

A The prices from the various vendors.

Q Wh[illegible] the various vendors on that quote sheet?

A Tabulating, Printhouse and Moore.

Q Do you know, sir, how those quotes were obtained?

A By Mr. Hasenstab.

Q How do you know that?

A Because the prices were given to me in this instance.

Q How do you know that, sir?

A It was already a confirmed purchase order.

Q Mr. Napoli, are you a member of a union?

A Yes, sir, I am.

Q What union is that, sir?

A The IBT, Local 732, I believe it is.

THE COURT: Is that the Teamsters?

THE WITNESS: Teamsters.

Q How long have you been a members of the union, sir?

A From its existence, about six years.

Q Are you familiar with a practice at Pan American with respect to the type of work that is performed by union employees in the buying units?

A To some extent, yes.

Q What is your familiarity with that practice?

A No productivity work done by supervisors.

Q What in your experience is productivity work?

Mr. Di Napoli?

A Exactly what this is, getting prices and writing up orders.

MR. KINGHAM: No further questions, your Honor.

THE COURT: You may inquire, Mr. Friedman.

CROSS-EXAMINATION

BY MR. FRIEDMAN:

Q Mr. Di Napoli, do you know Mr. O'Toole?

A Yes, I do.

Q Before you took the witness stand here today, did you have occasion to see him?

A Went to lunch.

Q Where did you go to lunch?

A A Chinese restaurant in Chinatown.

Q When you went over there to lunch, were you somewhat curious to know what had been happening in this courtroom insofar as Mr. O'Toole was concerned?

A No, I didn't ask him.

Q You had no curiosity about it?

A I am curious about everything, but that I couldn't ask. I was told not to question or talk about anything that occurs.

Q Who told you that?

A This I was told by the attorney.

Q What attorney?

A Mr. Kingham.

Q Kingham? All right. So you didn't discuss the case?

A No, we didn't.

Q Do you know George Barney?

A Yes, sir.

Q How long do you know him?

A As long as we have been dealing with Tabulating.

THE COURT: How long is that?

THE WITNESS: Four or five years approximately.

Q How often would you say that you have seen him in the last year, 12 months preceding today?

A I can't recall seeing him at all in the last year.

Q Do you remember seeing him in 1976 at all?

A Possibly once or twice when he came in.

Q Tell me, this union to which you belong is the Teamsters Union?

A Correct.

Q Do you have some particular status or function in unit 5 in reference to that union?

A No, sir, just as a member.

Q Haven't you indicated to people there that you are some kind of a steward?

A No, sir, never did, never was a steward.

Q You have described the function, I think you called it productivity, as including the getting of bids.

A Correct.

Q And productivity was a function of the union people, but not of the nonunion people, is that what you said?

A Correct.

Q If I understood your testimony correctly, you said that some 60 percent of the time in your opinion, Mr. Hasenstab was doing productivity work which was supposed to be done by the union?

A That's right.

Q If that be so, and you saw that happening, did you make any grievance complaint in reference to your union or anyone else?

A No.

Q Did Mr. Barney ever some years ago give you some baseball tickets?

A Yes.

Q When was that?

A Through Mr. Hasenstab he had gotten and gave them to me and says George, here is a couple of tickets Mr. Barney gave me. I am not using them.

Q Did Mr. Barney ever direct baseball tickets to you?

A Once or twice, yes.

Q That is in addition to the time you say that Mr. Hasenstab gave youthe tickets?

A Correct.

Q And you met with him personally and received those tickets?

A No, they were handed to me once or twice by Mr. Hasenstab.

Q Did you ever get any money from Mr. Barney?

A No, sir.

Q You are sure?

A Positive.

Q Did you ever ger any money from anyone else in terms of the performance of your duties as a purchasing agent?

A No, sir. No, sir.

Q When you say 60 percent, approximately 60 percent of the time you were given prices by Mr. Hasenstab, upon what do you base that estimate?

A It is an approximate estimate.

Q What did you use to make that estimate that you testified to now?

A Just on my own approximation.

Q You didn't look at any of the documents concerning purchase orders in making that estimate, did you?

A I was shown some by Mr. Kingham.

Q But did you use those in making your estimate?

A To some extent,yes.

Q Did you look at any -- withdrawn.

Do you know how many documents you looked at?

A I can't say offhand.

Q What about the 40 percent that you didn't get from Mr. Hasenstab?

A We sent them out on quotes.

Q Say again, sir.

A Sent them out on quotes.

Q You sent out those orders to Tabulating on quotes in the years that you were a buyer?

A Correct. Tabulating and other vendors.

Q Could the 60 percent that you are talking about be 50 percent?

MR. KINGHAM: Objection, your Honor.

THE COURT: I will let him ask. There is a certain amount of argument inthe question, but I will let him ask it. It is cross-examination.

A My estimate is an approximate, so it could be

50 percent.

Q Are you familiar with the term extended purchase order?

A Extended purchase order?

Q Yes, is there such a term that you are familiar with, yes or no?

A No.

THE COURT: What about blanket purchase order?

Q What about blanket purchase order?

A Blanket orders, okay.

Q Are you familiar with certain blanket purchase orders that were given to Tabulating Forms in 1975 or 1976?

A Don't recall any blanket purchase orders.

Q Do you recall any extensions of blanket purchase orders in 1975 or 1976?

A By extension, what do you mean?

Q Does an order have a beginning period and an end period?

A It has a beginning and it has an end. It runs for a year.

Q And it is estended beyond the year--

A It is supplemented and done as such.

Q Do you remember any such extensions for

1975 or 1976 in reference to Tabulating?

A Offhand I can't say.

p.m.

Q I show you the Defendant's Exhibit I and ask you to take a look at it.

A Yes.

Q The order shown on Exhibit I was to commence when, sir?

A May 15, '76.

THE COURT: Actually, let the record reflect there are several orders as I recall them, contained within that exhibit, and I would note for the record, the witness has looked at the first page in answering the question.

Q This order on the first page of Exhibit I, is that a blanket purchase order?

A It says "OB-5." It is a blanket.

Q Is that order subject to Mr. Welger in New Jersey?

A That is what the "Ship To" says.

Q Activating that order?

A Activating the requisition.

Q Activating the requisition means to call for the goods; doesn't it?

A Right. I should say purchase order.

Q There is on the second page of this order a supplement, is that correct?

A Correct.

Q And that supplement has a reference name of a buyer, Mardoza; is that correct?

A Yes.

Q Have you seen that supplement before today?

A No.

Q Do you know, sir, from looking at this Exhibit I, how this order was placed with Tabulating Forms?

THE COURT: Let the record reflect that the witness is now going through the entire exhibit which contains, as I recall it, several orders.

MR. FRIEDMAN: That's correct, your Honor.

THE COURT: I suppose you want to amend your question?

MR. FRIEDMAN: No, I want to ask the witness, if I may --

Q Would you be good enough, sir, just to look at the first order that I am talking about?

A Oh.

Q And tell us whether or not you can tell this jury the circumstances under which this order was issued.

A Not without the basic attachments that are not here.

Q Your name is listed on this order as the reference on the right, is that right?

A That's right.

Q How many orders would you say, sir, were issued by you as the purchasing agent in 1976 to Tabulating Stock Forms?

A I couldn't honestly say.

Q Have you had an opportunity to review those orders before testifying here today?

A No, sir.

Q Would you know how many you issued to Tabulating Forms in 1975?

A Couldn't possibly remember. It is not the only vendor I deal with.

Q You deal with many vendors, I take it?

A Correct.

Q Are they all in the paper business?

A No. I said that.

Q Pardon me, sir?

A I said stationery and other items.

THE COURT: I thought I heard the word "oddball."

THE WITNESS: Oddball is correct.

THE COURT: You used that. So you deal in a number of items, I guess.

THE WITNESS: A number of items, sir.

Q Before testifying here today did you have occasion to meet with a federal agent, and were you interviewed by him?

A Yes.

Q Do you remember when that was?

A About a week and a half, two weeks ago, I guess.

Q About August 10th?

A Around that.

Q If an order, sir, indicates on the face that a telephone order was placed by -- withdrawn.

Do you have any recollection, sir, of placing orders by telephone yourself to Tabulating Stock Forms?

A Yes, sometimes I have.

Q Do you have any recollection of directly receiving quotations from Tabulating Stock Forms?

A Over the phone.

Q Where would that order over the phone come from?

A Where would the order come from?

Q Where would the quotation come from, I'm sorry.

A From Mr. Barney.

Q He would call you, speak to you, give you a price?

A I would call him, tell him the form I was referring to, being that he was familiar with them previous to that, and also spoke to other vendors that had quoted on the same form.

Q Isn't it true that in the course of the years that you have been there, a number of purchasing agents have placed orders with Tabulating Stock Forms for paper goods?

A I presume so. We have ten buyers in our unit.

Q In your capacity as a purchasing agent, you would farm out to different buyers, from time to time, orders whic ultimately result or requisitions rather, that would ultimat result in goods being ordered from Tabulating STock Forms?

A Whoever they went to to get the quotes from.

Q You don't know who they went to?

A As not having the requisition to work on, I wouldn't know.

Q And they as buyers would be charged with selecting the vendor; is that right?

A Each buyer is responsible for his own work.

Q When you put in an order to Tabulating Stock Forms Inc., you were responsible for your work, isn't that true?

A Definitely.

Q But you tell this jury that your recollection is that Mr. Hasenstab tol you in 60 percent of the orders to ord from Tabulating?

A That I was familiar with.

Q When you say that you were familiar with --

A That I had known about, that I had seen.

Q Are these orders that you are talking about orders that you placed with Tabulating?

A The ones that came across my desk.

Q Are you telling this jury that whatever Mr. Hasenstab told you as to the price you accepted and put down in the order?

A Yes.

Q And when Mr. Hasenstab told you Tabulating Stock Forms, you selected Tabulating as the vendor on his say so?

A He was my boss, he gave me an order to do it. I only did what I was told.

Q Did you put down on any of your order forms that you had received such instructions from Mr.Hasenstab?

A No.

Q These weren't selections of a vendor that you made by yourself, that's what you have told us, right?

A Beg your pardon?

Q These weren't selections of a vendor that you made by yourself?

A That's right.

Q But you did not make any notation of the fact that the selection had been made by Hasenstab?

A Mr. Hasenstab was a principal buyer from previous experience. I assumed he knew what he was doing.

Q And you say that you made up that order and took that information from Mr. Hasenstab even though the union rules were such that the buyer was the one supposed to be getting the quotes?

A Correct.

Q Do you know Mr. Welger?

A Yes.

Q How long do you know Mr. Welger?

A Ten years or so, as long as we have been with Pan American, I assume.

Q Have you ever met with him socially?

A No.

Q What is his capacity with Pan Am?

A He works in the Data Processing Department. What his title is, I do not know.

Q Have you had occasion to speak to him from time t time over the years?

A Yes, we worked in the same building.

Q In New Jersey?

A New York.

Q What was his capacity when you worked with him in the same building?

A Some sort of a supervisor.

Q What was your capacity then?

A Buyer, junior buyer.

Q Was he a buyer then?

A No.

Q Was he a supervisor of buyers then?

A He wasn't a supervisor of anything to do with purchasing. He was supervising the Data Processing Department.

THE COURT: As such, was he what you people call the user?

THE WITNESS: Yes, the commodity was used by his department.

Q Were there occasions, sir, if you know, when user departments would select the vendor of the goods concerned?

A The user department would select the vendor?

Q Yes.

A There are cases.

Q All right.

Do you have any recollection now in reference to Tabulating Forms, as to any instances that you are familiar with when the user department to which Mr. Welger is assigne selected Tabulating Forms as the vendor?

A Not that I recall.

Q When a purchase order is typed up, is there thereafter, ultimately, some type of shipping order which is separate from the purchase order?

A That is Shipping Department. I don't know how they handle their shipping procedure.

Q Do you know as a purchasing agent whether or not a copy of the purchase order goes to the user?

A To the requisitioner, yes.

Q So that the requisitioner will know from the copy of the order that he receives what the price was that was pai for that quantity of goods?

A Everything is on it, it is a duplicate copy of the original purchase order that is typed.

Q Are you aware of the fact, sir, that Pan American conducted an investigation within the company to determine the circumstances under which Tabulating Forms received a certain quantity of orders?

A I am aware of it now.

Q You were aware of it before today, isn't that right?

A Two weeks ago when the gentleman questioned me, that you spoke about. Until then I didn't know that they were investigating anybody.

Q Did you know that Pan Am had an internal investigation?

A They had internal auditors. That I know of.

Q All right.

You knew there was an internal audit and that that internal audit had to deal at least in part, with the subject of how it was that Tabulating received a certain quantity of business; isn't that so?

A That I cannot clarify because I was questioned. We were questioned about everything that was there, printed orders, stationery, and everything. We did not know.

Q Were you questioned about Tabulating Stock Froms as one of the vendors?

A I was asked about where to find the Tabulating Stock orders in the file.

Q Were you ever questioned specifically about Tabulating Stock Form orders by Pan American?

A No.

Q Were you ever shown orders that you signed -- withdrawn.

Were you ever shown requisitions that you signed selecting Tabulating as the vendor during the course of this questioning by people in Pan Am?

A One or two of them they had asked.

Q And they asked you specifically, didn't they, about Tabulating Stock Forms?

A They asked me about other vendors also.

Q But they asked you specifically about Tabulating Stock Forms, isn't that right?

A They did question that.

Q And did they ask you about Moore?

A They were checking on prices with various vendors.

Q So that you knew from those questions that this inquiry had to deal with the circumstances under which paper products of a certain type were being purchased by Pan Am, isn't that true?

A No, sir. We have simply annual auditors that are always asking questions about various commodities at the time

Q Are you saying that this came up in --

A This came up in June --

THE COURT: Let him finish.

A This was a June audit that came up on us, a six-month audit that came in. So we were told.

Q What June are you referring to?

A This year.

Q June '77?

A It occurs every year, semi-annually.

Q Was inquiry made on this subject in December of '76?

A Didn't ask me any questions then.

Q How about at some time before December of '76?

A Normally they went to the supervisor or manager and asked questions about anything that the auditors were to know.

Q But you became aware, at least this June, of an investigation which concerned at least in part --

A Not the investigation. I didn't know anything about an investigation. I just knew the auditors were going through the books and also going through purchase orders whic they normally did semi-annually.

THE COURT: But this time they asked you questions

THE WITNESS: The supervisor wasn't there at the time. Mr. O'Toole had no answers about purchase orders. He was a new manager. So he came and he asked me if I understood purchase orders and to do this and to do that.

Unfortunately, I was the lucky one.

Q You were asked this June details concerning different vendors?

A A couple of vendors, yes.

Q Whether or not vendors that you were asked about besides Tabulating.

A Offhand, I don't remember. They just questioned the orders and then that was all there was to it.

MR. FRIEDMAN: That's all I have.

REDIRECT EXAMINATION

BY MR. KINGHAM:

Q Mr. DiNapoli, let me show you Defendant's Exhibit I again.

Do you recall Mr. Friedman asking you questions about Defendant's Exhibit I and pointint out to you your name in the "Please refer to" on the first purchase order which I believe is dated 5/8/75.

Do you remember being asked about that?

A Correct.

Q In the situations about which you testified, when Mr. Hasenstab gave you the prices and told you to select Tabulating Forms, whose name would be placed on the purchase order in the "Please refer to," section?

A My name.

Q Why was that, sir?

A Because I had assigned the purchase order. So it was the buyer's name to put his name on the purchase order.

MR. KINGHAM: Nothing further, your Honor.

MR. FRIEDMAN: No questions.

THE COURT: Thank you, Mr. DiNapoli. You are excused.

(Witness excused.)

MR. KINGHAM: Government calls George Barney.

hblt 14

GEORGE J. BARNEY, called as a witness on behalf of the government, having first been duly sworn, testified as follows:

THE COURT: You may proceed, Mr. Kingham.

MR. KINGHAM: Thank you, your Honor.

MR. FRIEDMAN: Do you have any other witnesses in the courtroom?

MR. KINGHAM: No.

DIRECT EXAMINATION

BY MR. KINGHAM:

Q Mr. Barney, I would ask you to keep your voice up so that we may hear you. Sometimes it is a little difficult in here. Would you do that for me?

A Yes.

Q Mr. Barney, how are you employed at the present time, sir?

A I am a salesman for a jobber, broker.

Q A broker of printed forms?

A Yes.

Q What is the name of that company?

A Corporate Forms.

Q Up until April of this year, 1977, how were you employed?

A As the president of Tabulating Stock Forms.

Q How long had you been with Tabulating Stock Forms?

A Since 1959.

Q Were you one of the founds of that company?

A Yes.

Q What during its existence was the business of Tabulating Stock Forms?

A Originally to act as a broker of forms, later as a manufacturer and then again as a broker.

Q What does a broker or a jobber of forms do? What does that mean?

A He doesn't have his own manufacturing facilities, and when he gets an order, he has it printed with someone who does, and that person usually doesn't have direct salesmen.

Q When was it that you, or that Tabulating Stock Forms opened a manufacturing facility?

A Around 1964.

Q Where was that manufacturing facility located?

A 54 East 11th Street, New York City.

Q In Manhattan?

A Yes.

Q How long did the company remain in the manufacturing end of the business forms business?

A To about April of 1976.

Q Other than 54 East 11th Street, did the company have any other plants or any other offices?

A Yes.

Q Can you tell us where there were and when they were in operation?

A Around 1967, we moved to 23rd Street on the east side. I think it was 310, and in 1969 we moved to Long Island City.

Q The 23rd Street location, was that on the east side or the west side?

A East.

Q Did there come a time when you moved from Long Island City?

A Yes.

Q When was that?

A We opened up a sales office in Manhattan. I thin it was in June of '75.

Q Where did you open your office then?

A At 115 Broadway.

Q Downtown here?

A Yes.

Q Before 1959, Mr. Barney, when you helped to found this company, what was your line of work, what did you do?

A I sold business forms as a salesman for Moore

Business Forms.

Q How long had you been with Moore Business Forms?

A About seven or eight years.

Q When you first started Tabulating Forms, who owned that company?

A I owned a third and two other men each owned a third.

Q Did there come a time when you owned the whole company yourself?

A Yes.

Q When was that?

A About a year and a half later.

Q You bought them out?

A Yes.

Q Did you continue to own it yourself up until April of this year?

A No. I always was the major stockholder after that but the company went public in 1969 and I sold 28 percent to the public.

Q That means you kept 72 percent of the stock and sold 28 percent to members of the public; is that correct?

A Yes.

Q Did there come a time when you yourself, either as a salesman or president of Tabulating Forms, began to do business with Pan American World Airways?

A Yes.

Q When was that?

A Immediately when I went into business.

Q Had you worked with Pan Am when you were with Moore Business Forms also?

A Yes.

Q How long did your business with Pan American continue?

A Until January of this year.

Q Of '77?

A Yes.

Q During those almost 20 years, sir, do you know who your major competitors were for printed forms business at Pan Am?

A Later it was the company I originally worked for, Moore.

Q How about before that?

A When I was with Moore, their major competitor, to my knowledge, was a company no longer in business called American Litho. Their home office was in St. Louis.

Q During the course of your business, I am talking about the Tabulating Forms business, from 1959 or so on, during the course of that business, by what method would you be paid for your work by Pan American?

A By check.

Q How would you get the check?

A In the mail.

Q Where would it be mailed?

A To wherever we were conducting our business at that time. Either New York or Long Island or then again New York.

Q Would you keep your voice up, please, Mr. Barney?

A Yes.

Q How would you get the check, what would you do to generate the payment of this check?

A I would mail an invoice.

Q Where would the invoice be mailed?

A Originally, to Long Island City. I assume, because that is where their main office was. They own a building in Long Island City called the Pan American Building.

THE COURT: That's just over the Queensborough Bridge?

THE WITNESS: Yes, sir.

THE COURT: They had an office there?

THE WITNESS: They had the whole building. I am pretry sure there is where the invoices were mailed from. Later they bought a building in New York again called the Pan American Building near Grand Central Station, and the invoices were mailed from there, and right up until the end that I did business with them, they were mailed there. They had a Post Office Box.

Q Was that the usual method of payment in your business relationship with Pan American World Airways?

A Yes.

Q Let me show you, Mr. Barney, what has been marked as Government's Exhibit 7 for identification, and ask you to look through those documents if you would.

(Pause.)

Q Do you recognize them?

A Yes.

Q What are they?

A They are checks made out to my company for bills that we had mailed them.

Q Do you know what years those checks covered?

A From January of '72, if they are in order, to December of '76.

Q Do you know how those checks were received from your company by Pan American?

A In the mails.

MR. KINGHAM: Your Honor, Government's Exhibit 7 for identification offered as Government's Exhibit 7. It consists of four parts, but they are all bound together.

THE COURT: They are all checks; are they all of the same type made payable to the same payee, drawn by the same maker?

MR. KINGHAM: Yes, your Honor.

THE COURT: Very well.

MR. FRIEDMAN: No objection.

THE COURT: Received.

(Government's Exhibit 7 was received in evidence.)

MR. KINGHAM: Does your Honor care to examine the exhibit?

THE COURT: Yes.

I would note that contained within the packages of checks there appear to be adding machine tapes. Are those part of the exhibit?

MR. KINGHAM: They are but only for convenience, your Honor. We do not intend to use them, frankly, or refer to them.

THE COURT: Very well.

I gather this last page is the most recent, beginning January 1, 1976?

THE WITNESS: Yes.

THE COURT: Very well.

Q Mr. Barney, during the course of your business with Pan American did you come to meet a man by the name of William Hasenstab?

A Yes.

Q When and where, if you recall, did you first meet him?

A Around 1967 and it would have been at the Pan American Building in New York.

Q Do you see Mr. Hasenstab in the courtroom?

A Yes.

Q Would you be good enough to point him out, sir?

A Seated right there (indicating).

MR. FRIEDMAN: I concede the identification.

A The green shirt.

THE COURT: Very well. It has been conceded that Mr. Barney has pointed out Mr. Hasenstab. Very well.

Q When you first came to know Mr. Hasenstab, sir, how was he employed?

A As a buyer of forms, printing.

Q For Pan American?

A Yes.

Q Was he the buyer with whom you were to do business in those days?

A Yes.

Q During 1968 and 1969, Mr. Barney, how often did you see Mr. Hasenstab, if you know?

A At least once or twice a month.

Q Where did you see him on those occasions?

A Mostly at a bar called Charley Brown's.

Q Where is that located, sir?

A In the Pan American Building.

Q On what day of the week would you see him?

A Fridays.

Q About what time of day?

A Fivish.

Q For how long a period of time did these meetings continue?

A Until the end of 1970.

Q Do you recall any conversations that you had with Mr. Hasenstab at these Friday evening meetings?

A Yes.

Q Do you recall when the first conversation is that you had that you know about?

A About 1968.

Q Do you remember what you said to him and what he said to you?

A Yes.

Q What was that, sir? Keep your voice up.

MR. FRIEDMAN: I object to any conversations in 1968.

THE COURT: Just one moment.

(Pause.)

THE COURT: On what ground, counsel?

MR. FRIEDMAN: Statute of limitations, Judge.

THE COURT: That would not be applicable in connection with alleged contacts and I am going to take --

MR. FRIEDMAN: I will withdraw the objection.

THE COURT: Very well.

Q Do you recall, sir, at the first conversation or conversations around 1968 at Charley Brown's, what you said to Mr. Hasenstab and what he said to you?

A Yes.

Q What was that?

A It got to a point where we were meeting at Charley Brown's, socializing and drinking, because that's what he preferred, and I was starting to get some good business through him.

MR. FRIEDMAN: I object to that and move to strik it out as not responsive to the question.

THE COURT: Yes. I think we will leave it "We were meeting at Charley Brown's bar." The question called for the conversation and I think to be responsive, you should get to those.

A I was appreciative of the business.

MR. FRIEDMAN: I object to that.

THE COURT: If he said it, fine. Let's just get into the substance of the conversation.

Did you say something to that effect?

THE WITNESS: I did.

THE COURT: Tell us what you said.

THE WITNESS: I said I appreciated the business.

THE COURT: You told him you appreciated the business. Very well.

THE WITNESS: And I asked him if I could do anything in the way of tickets to plays or maybe pick up a dinner expense for him. I don't think he was married at the time. And he said no, he liked the drinking all right, and I can't remember his exact words, but he let me know that he wanted something other than the normal things of tickets and entertainment.

MR. FRIEDMAN: I move to strike that out, Judge.

THE COURT: We are going to have to get the substance of what he said.

THE WITNESS: He wanted money.

THE COURT: He said he wanted money?

THE WITNESS: Yes.

THE COURT: In other words, he told you that he wanted money?

THE WITNESS: Right.

THE COURT: All right.

THE WITNESS: And he told me that he didn't want to be a hog about it, he only expected to get from a fellow what he was worth to that fellow.

Q What did you say?

A I agreed.

Q What did you do after that?

THE COURT: Is that what you said? Did you say, "I agree"?

THE WITNESS: I said, "That's fine."

THE COURT: You said "That's fine"? All right.

Q What did you do after that?

A I gave him what I considered small sums.

Q How much did you give him?

A 50 or 100 dollars.

Q How often?

A Once or twice a month.

Q Cash or check?

A It has to be cash.

Q Where?

A Charley Brown's.

Q For how long a period of time did these cash payments go on?

A Those specific payments went on until the end of 1970.

Q During these meetings in Charley Brown's, was there anyone else present other than you and Mr. Hasenstab?

A Yes.

Q By present, I mean in your party.

A Right.

Q Who was that?

A There were different people. Most times I would see a fellow who was a salesman with another printing company. I forget his name. I think it might have been George, but I can't swear to it.

Q What was the name of the company?

A Dennison.

Q Was anyone else present?

A His brother was there once.

MR. FRIEDMAN: I'm sorry, I didn't hear that.

THE COURT: His brother was there once. Whose brother?

THE WITNESS: Mr. Hasenstab's.

THE COURT: Do you recall his name?

THE WITNESS: Fred is a guess.

THE COURT: Just a guess?

THE WITNESS: As a guess. I can't swear to it.

THE COURT: We don't want guesses. We will strike it.

You don't recall?

THE WITNESS: No.

THE COURT: Very well.

Q Anyone else present?

A He had a girl a few times. The president of Dennison & Sons was there one Christmas. I can't recall anyone else.

Q At these meetings, how did you accomplish your payments to Mr. Hasenstab, what would you do?

A Well, we were by ourselves, it was very crowded in the place. I would just hand him the money.

Q Where would that be?

A At the bar.

Q If you were with others in a party?

A We would excuse ourselves.

Q Where would you go?

A We were usually on the side where the men's room was, just step through a doorway going into the men's room and we wouldn't go in there, we would just wait until it was quiet and I would give him the money.

Q What would Mr. Hasenstab do with the money?

A Put it in his pocket.

Q During these FRiday evening meetings at Charley Brown's, did Mr. Hasenstab ever leave the table or the bar without you?

A We were always at the bar. We were never seated.

Q Did he leave the bar without you?

A Yes.

Q How was that?

A With the fellow, the salesman from Dennison.

Q What would he do?

A The same thing with him that he and I did.

MR. FRIEDMAN: I move to strike that out, Judge.

THE COURT: Yes, I don't think it is clear anyway. I am going to strike it.

MR. KINGHAM: I will put a question, your Honor.

THE COURT: I think that would be better.

The jury should disregard what I just said I would strike. Counsel will put a question.

Q Did you see where they went?

A Yes.

Q Where was that?

A Through the door.

Q Through what door?

A The same door that led to the men's room.

Q Mr. Barney, what if you know, happened to the volume of Tabulating Forms' business with Pan American during the years 1968 and 1969?

A It improved.

Q You mentioned that the meetings continued until 1970. What happened then?

A The company had gone public in '69. We moved to Long Island City and we had a long strike.

Q How long was the strike if you recall?

A It was 94 days.

Q What was the effect of that strike on your company?

A It was devastating.

Q What was the effect of the strike on your business with Pan Am?

A I couldn't afford to continue doing business.

Q For how long a period of time did that continue?

A For about a year.

MR. FRIEDMAN: The strike or not doing business?

MR. KINGHAM: The strike has already been identified as 94 days.

THAT COURT: That's 94 days. We have that.

For how long a period of time did you not do business with Pan Am?

THE WITNESS: About a year.

Q Did you do any business with Pan Am during that time?

A My problem with Pan American in not doing business?

MR. FRIEDMAN: I object to the witness not responding to the question.

THE COURT: The question is did you do any business. If you did a little business, tell us, if you did a lot, tell us; if you did none, tell us.

THE WITNESS: I didn't take any orders.

Q Other than taking orders, did you do any business?

A We made shipments against merchandise in inventory.

Q Do you recall how much money the company received from Pan Am during 1969, 1970?

A About 40 to 50 thousand dollars.

THE COURT: The two years?

THE WITNESS: One year he's talking about.

Q What year is that, 1970?

A '70. That's what I'm talking about, 1970.

Q How did that compare with previous years?

A It was less than it had been.

Q Did there come a time when you were able to take orders from Pan American again?

A Yes.

Q When was that, sir?

A During '72.

Q Did you see Mr. Hasenstab at that time?

A Yes.

Q Do you recall when it was in 1972 and where it was?

A I don't recall the time of year, but I remember it was at Charley Brown's.

Q Did you have a conversation with him?

A Yes.

Q Do you recall, sir, what you said to him and what he said to you?

A Yes.

Q What was that?

A I told him that we were able to go back to doing business and he was worried about our being financially able to carry them, and I said we were, and I then told him that I was prepared to do a pay-off on a regular basis, very business-like, and he responded that he liked that and he repeated what he had originally told me in '68, that all he expected was whatever I thought he was worth. That's all he wanted. He didn't want more than what was fair, and it was either at that conversation or later, I forget if it was at that conversation, but I told him I would make the 5 percent.

THE COURT: 5 percent of what?

Q Of sales? I didn't hear you.

A Of sales.

MR. KINGHAM: Thank you, your Honor.

Q After that meeting in 1972, sir, how many times--how often did you see Mr. Hasenstab?

A At least once a month.

Q Other than seeing him, would you have telephone contact with him?

A Yes.

Q For how long a period of time did your monthly meetings continue?

A Until January of 1977.

Q During 1972 and 1973 do you recall where you would meet him?

A 1972? At the Pan American Building.

Q Where?

A At the cigar stand. They had several in the building, but this was on the mall with the elevators.

THE COURT: The one that's up from Grand Central Station?

THE WITNESS: Yes.

THE COURT: You go up the escalators from the station?

THE WITNESS: Yes.

THE COURT: And there is sort of a mezzanine?

THE WITNESS: Yes.

No, no, there's two. You go up a second set of escalators.

THE COURT: Second set of escalators and there's a cigar stand there?

THE WITNESS: Yes.

Q When you would meet him at the cigar stand, would you stay there?

A No.

Q Where did you go?

A Different parts of the building.

Q For example?

A Out on the ramp, the car ramp that extended from Park Avenue down to Park Avenue South, ran around the building. Sometimes we would go out there, sometimes we would do it on an escalator, sometimes in an elevator.

Q What took place at these meetings? What did you do?

A I gave him money.

Q Do you recall how much?

A I can't pin it down in those years, no, but I know overall, it was 5 percent of whatever my sales were for the year.

Q Did you give him this money in cash or in check?

A Cash.

Q Beginning in 1972 when you resumed your business with Pan American, what was the method by which you obtained business?

A He would let me --

Q Who is he?

A Mr. Hasenstab would let me know what forms were to be quoted and at our meetings we discussed the prices.

Q What would you do?

A I would usually know what forms he was going to discuss and the quantities from a previous phone call, and I would have the prices that he wanted to quote, and he would give me direction on them.

Q What do you mean he would "give you direction"?

A He would always let you know which ones you were going to get or if you had to go up a little bit and say "You're not going to get this one," or "You have to come down a little bit."

Q During these meetings did you ever learn the price of any of your competitors?

A Not really.

Q Calling your attention to the year 1974, did you meet with Mr. Hasenstab during that year?

A Yes.

Q Do you recall how often you met him during 1974?

A At least our monthly meeting.

Q Where would you meet him during that year?

A Mostly at the Pan American Building.

Q At the same location?

A Yes.

Q Did you ever meet anyplace else?

A Sometimes out at the airport, but infrequently.

Q I'm sorry?

A Sometimes out at JFK Airport.

Q If you met him there, where did you meet him?

A Usually at the reception desk. Then he would bring me back to -- not to his desk, because it was an open area, we would go to a cubicle and discuss business.

On two occasions I gave him money in the cubicle, but it was a bad place to do it and sometimes we would do it when we were leaving, and once in the bathroom and I think twic I met him at a restaurant near the airport.

Q Do you remember what restaurant that was, sir?

A I think it was a Howard Johnson's Resturant or what became a Howard Johnson's Restaurant.

Q Do you know, sir, how much you paid him in 1976?

A Again, 5 percent of my sales. I made sure to do that.

Q Cash or check?

A Cash.

Q Did you meet Mr. Hasenstab during 1975?

A Yes.

Q Where did you meet him that year?

A It was the same routine, either -- usually at the Pan American Building but occasionally out at the airport.

Q How often during '75?

A Once a month.

Q What happened on those occasions?

A Same thing.

Q Do you know how much you gave him in monthly amount during 1975?

A I know I had built up at the end of '75 or the beginning of '76, to a monthly payment of $2,000.

Q What happened, sir, to the volume of your business between 1972 and 1975?

A It increased every year.

Q Are you famliiar with something called the Stock

Tab Contract?

A Yes.

Q What is the Stock Tab contract?

A It is a contract that is awarded once a year, supposed to be, and it is for monthly shipments of paper to their computer center in Jersey.

Q During 1975 did you have occasion to discuss that contract with Mr. Hasenstab?

A Yes.

Q Do you recall when that happened in 1975?

A It was in the spring.

Q Do you recall where the conversation took place?

A It was at one of our meetings.

Q Do you recall what Mr. Hasenstab said to you and what you said to him?

A I can't remember whether I approached him for the contract or he offered it to me, but we discussed it.

Q Do you recall what the discussion was?

A Yes.

Q What was that, sir?

A That he would see that I got part of the contract, about half of it for the balance of that year.

Q Who had the contract --

THE COURT: Let's go back a minute.

When did you have this conversation with Mr. Hasenstab?

THE WITNESS: In the spring of 1975.

THE COURT: The spring of 1975?

THE WITNESS: Yes.

THE COURT: Very well. I think I interrupted you, counsel. I think it was a "who" question.

MR. KINGHAM: Thank you, your Honor.

Q Who had the contract or what company had the contract for 1975, if you know?

A Moore Business Forms.

Q Did you subsequently obtain part of that contract?

A Yes.

Q What happened when you got part of the contract that Moore already had?

A The salesman became aware that I was making part of the shipments.

Q Who was the salesman for Moore Business Forms?

A A fellow by the name of Bill O'Brien.

Q What did you do after that?

MR. FRIEDMAN: I object to it.

THE COURT: What's that?

MR. FRIEDMAN: I object to what the witness did with O'Brien.

THE COURT: Yes, I will strike everything after his identification of who was the salesman for Moore, which was O'Brien. Everything after that is stricken.

MR. KINGHAM: May I approach the side bar for an offer of proof, your Honor? Just take a minute.

THE COURT: Yes.

MR. KINGHAM: Thank you.

(At the side bar.)

THE COURT: The portion that I intended to strike was the answer to the question "Who became aware that you were making part of the shipments?" Now I will hear you.

T6B

MR. KINGHAM: I believe your Honor, that question which was two back was what happened when you got part of the business that Moore already had, he said the buyer for Moore, the representative of Moore became aware of it. I am not looking for conversations, obviously. I tried to cut him off at that point. My offer of proof is this: First of all, Mr. Barney's answer is expected to be that he put O'Brien's brother on the payroll, on his payroll, and I am going to leave it at that. But it has two relevancies. First of all, we are entitled to bring out up front criminal acts which may have been committed by Mr. Barney in addition to those to which he is testifying about the instant indictment for purposes of impeachment and my second ground if I may, is that it is relevant to the coverup here because an obvious question in the jury's mind is going to be well, if Moore business forms had this contract and all of a sudden Barney starts making some shipments, why don't they squawk, the answer simply is he put O'Brien on the payroll to shut him up. I am not going to go into conversations but I think we are entitled to do that.

MR. FRIEDMAN: I don't think that is the inference the jury can raise nor do I think that is the question the jury can raise and I don't think there is any relevance at all as to what corrupt act he did with the gentleman from Moore Business Forms. I jus't don't see it.

THE COURT: What is the ground for your objection? You say it is not relevant?

MR. FRIEDMAN: It is not relevant at all to the issues as to what this gentleman did with the defendant or the conspiracy charge.

THE COURT: If you don't intend to raise this point which I would be surprised at, I would say I might agree with you that it isn't relevant, but if you are going to get into it at some point, I think Mr. Kingham's point is well taken that the government has the right to bring it out up front.

MR. FRIEDMAN: Whether it is up out front or out up front, I won't raise the question for the salesman for Moore.

MR. KINGHAM: Am I to understand that counsel is waiving a line of cross-examination to impeach Mr. Barney by virtue of the fact that he may have committed other criminal acts other than those related to the instant indictment by paying off people at other companies?

MR. FRIEDMAN: I may have once practiced in the Bronx but I graduated from there and I don't think you are treating me fairly when you ask me if I intend by my comment to make such a broad waiver. I do not.

MR. KINGHAM: Then I think we are entitled to it.

THE COURT: I think Mr. Kingham expected the answer which you gave which I expected as well and it leads me to the conclusion that it does fall within the bounds of what the Federal Rules of Evidence have indicated is relevant. So I will permit you to inquire as to what he did.

MR. KINGHAM: I will not elicit conversations.

THE COURT: Very well.

(In open court)

THE COURT: You may proceed, Mr. Kingham.

MR. KINGHAM: Thank you, your Honor.

Q Mr. Barney, I believe the pending question was what did you do with respect to Bill O'Brien?

A Well --

Q No conversations please, just tell us what you did.

THE COURT: Just what you did if anything.

A. I gave him five percent of the sales that he lost because I had the stock contract.

MR. FRIEDMAN: I object to that, Judge, because there has been no establishment here that that company lost any sales. I object to that reason. If he wants to say he gave him money, it is more limited.

THE COURT: Apparently you gave him money, is that correct?

THE WITNESS: Yes.

THE COURT: Perhaps if you can explain how you computed it, it would be clearer.

A I ended up with half of that six months' contract which was worth approximately $75,000.

Q Could you keep your voice up, Mr. Barney, I can't hear you.

THE COURT: I would like the jurors to hear.

A I ended up in 1975 in June getting half of the stock contract for the rest of the year. Moore would ship in half, and I would ship in half, and it was approximately $75,000 to me.

Q Can you answer the Judge's question as to how you computed the amount that you gave to Mr. O'Brien?

A 5 percent of $75,000.

Q How did you accomplish the payments to Mr. O'Brien?

A He had me mail a check, make out the check and mail it to his brother.

MR. FRIEDMAN: I object to that.

THE COURT: Strike that.

What, if anything, did you do?

Q What did you do?

A I made checks out to his brother and mailed them.

Q What happened to the stock paper contract for 1976 if you know?

A I was given the entire contract.

Q What was the amount that was to be paid to you under that contract for 1976?

A It would have been about $300,000,

Q How did it come about that you received the contract?

A Hasenstab was able to transfer the entire contract to me.

MR. FRIEDMAN: I object to that. Move to strike it out. Ask the jury be instruction.

THE COURT: Yes. The jury is instructed to disregard the last response. The witness will have to start over and --

MR. KINGHAM: I will put a question, your Honor.

THE COURT: And answer the question which is now about to be posed.

Q Do you know when it was Mr. Barney, that you obtained the contract for 1976?

A I would have to guess as to the exact time.

MR. FRIEDMAN: I object to his guessing.

Q What is your best recollection?

A December.

THE COURT: Of what year?

THE WITNESS: '76.

THE COURT: Wait. I am a little confused.

THE WITNESS: I'm sorry, December of '75.

THE COURT: In December of '75 as I understand your testimony, you received a contract from Pan American to furnish their entire supply of stock tabulating paper or computer paper?

A No, to go back a bit, your Honor.

THE COURT: Would you go back, then.

A In June of '75, I submitted prices to Pan American on the stock paper. They were slightly below what Moore was getting.

Q Keep your voice up.

A And there were four basic items on there. From 1 to 4 parts. That was the meat of the contract, and I was given an open end contract, no quantities on it, to supply that stock paper every other week to the end of 1975. For all of 1976, I was to get the entire contract with those prices just extended.

Q Prior to December, 1975, did you discuss the 1976 contact with Mr. Hasenstab?

A Yes.

Q Do you recall what your conversation was?

A Yes.

Q What did he say to you and what did you say to him, sir?

MR. FRIEDMAN: May we have some time frame.

THE COURT: As close as you can, can you tell us when this conversation took place?

A About November or December.

THE COURT: Of 1975?

THE WITNESS: Yes.

THE COURT: Very well. While we are at it, do you recall where the conversation took place?

THE WITNESS: It would have been at one of our meetings in the Pan American building.

THE COURT: Very well.

Q What was said?

A He told me I could have the entire contract for 1976 without bidding.

Q What did you say?

A I said great.

Q Did you get the contract for that year?

A Yes.

Q At what price level if you recall?

A The same price as I had for 1975.

Q Did there come a time when those prices increased?

A Yes.

Q When was that?

A I think around the spring of 1976.

Q At about that time, did you have a conversation with Mr. Hasenstab?

A Yes.

Q Where and when did that take place if you recall?

A It would have been again at one of our regular meetings.

Q Do you recall where this would be in 1976?

A At that time, we was still in I think, the Pan American building.

Q What was the conversation that you had with Mr. Hasenstab?

A I told him I had received a price increase on the stock paper and he told me that was all right, just to submit a letter with the new prices and he would put the paper work through to absorb it.

Q After April of 1976--

THE COURT: In other words, your sorce of supply had increased your price?

THE WITNESS: Yes.

THE COURT: So you had to pay more for the stock that you were getting?

THE WITNESS: Correct.

THE COURT: You then told Mr. Hasenstab about that?

THE WITNESS: Yes.

THE COURT: What did he say?

THE WITNESS: He said just to submit a letter with the new prices and he would take care of it.

Q After the spring of '76, did you have occasion to discuss prices on that contract with Mr. Hasenstab?

A Yes.

Q When was that?

A In September.

Q Where?

A At the Hamilton House.

Q What is the Hamilton House and where is it?

A It is a restaurant in Brooklyn near the Verrazano Bridge.

Q Do you recall what you said to Mr. Hasenstab and what he said to you in September of '76?

A Yes.

Q What was that?

A I had had another price increase and I really wasn't asking for more money at that time, because--

Q What did you say to him?

A I told him I had another price increase.

Q What did he say?

A He said I could again get it picked up by Pan American or wait to the end of the year when the new contract was supposed to go out and he would just put the extension through as he had the previous year at higher prices.

Q During your association with Pan American--

THE COURT: What did you say, if anything?

A It was so close to one another, the price increase, I thought it was better to wait.

THE COURT: You told him you would wait?

THE WITNESS: Yes, and it hadn't been as large as the other so I thought it was sensible to wait.

Q You didn't put the increase through at that time, is that right?

A No.

Q During your association with Pan American, did you ever have occasion to go to Rockleigh, New Jersey?

A Yes.

Q What is located there?

A The data processing center.

Q Between 1972 and the end of '76, how often would you go there?

A Would you ask me again the dates?

Q Between '72 and the end of '76, say, how often would you go there?

A I forget when they moved there. But I ended up going there very frequently, at least three times a month.

Q Who would you see there?

A Sol Welger.

Q Do you know what Mr. Welger's position was?

A I don't know what his title was, but he was in charge of seeing that things flowed properly in the data processing.

Q Did you ever speak with Mr. Hasenstab at Rockleigh, New Jersey?

A Well, from there, yes.

Q On the telephone or in person?

A On the phone, I never met him there, although he did go there occasionally.

Q Where was he when you would speak to him on the phone from Rockleigh?

A At JFK.

Q Did you ever have occasion to telephone Rockleigh, New Jersey, from 115 Broadway?

A Yes.

Q How often would you say you did that?

A Three, four times a week.

[illegible] Who would you speak with?

A Sol Welger.

Q Let me show you, Mr. Barney, Government's Exhibit 9 both marked for identification. Do you recognize those?

A Yes.

Q What are they?

A They are blank receipts from a restaurant in Queens.

Q When did you first see those?

A In 1975.

Q Where?

A At 115 Broadway.

Q How did they come into your possession?

A They were mailed to me.

Q Do you know by whom?

A Bill Hasenstab.

Q Prior to the time you received them, did you have a conversation about them with Mr. Hasenstab?

A Well, I didn't discuss this but I told him.

MR. FRIEDMAN: I object to anything further.

THE COURT: Yes,at this time. Sustained.

Q Prior to receiving those forms, did you have a conversation with Mr. Hasenstab period.

A Yes.

Q Do you recall what the conversation was?

A Yes.

Q Do you recall where it took place?

A I just know we had it. It could have been at the Pan American building or it could have been on one of my trips out there.

Q Do you recall what Mr. Hasenstab said to you and what you said to him?

A Yes.

Q What was that?

A I told him I was finding it difficult to substantiate the sums of money I was taking out. In fact I was being audited by the government on my taxes and he volunteered two things. One was a thought he had which we didn't pursue.

Q What did he say?

A He said perhaps we could put his wife on the payroll, but we didn't pursue it beyond that, and the other was that he would send me blank receipts from a restaurant, the Chelsea as it turned out, that I could use to substantiate whatever I had to or could in the way of expenses.

Q At that time, that is in 1975, how did you obtain the money to pay Mr. Hasenstab?

A I drew checks out of the company.

Q I'm sorry, you drew?

A Checks.

Q From where?

A The company, my company.

Q Who were they payable to?

A Me.

Q What would you do with them?

A Cash them or have them cashed.

Q When was it again that you received those documents, Government's Exhibits 8 and 9 for identification?

A In 1975.

Q Have you had them in your possession ever since?

A Yes.

Q Until when, sir?

A A week ago.

Q What did you do with them a week ago?

A I gave them to you.

MR. KINGHAM: Your Honor, Government's Exhibits 8 and 9 for identification offered as Government's Exhibits 8 and 9 respectively.

THE COURT: Show them to counsel.

MR. FRIEDMAN: I have no objection.

(Government's Exhibits 8 and 9 received in evidence.) xx

MR. KINGHAM: Your Honor, if I may with Government's Exhibit 9 in evidence, there is surely enough copies, if I could just pass them through the jury so the jurors can see what they look like.

(Pause)

Q Mr. Barney, do you know where the Chelsea Restaurant is?

A Yes.

Q Where is that?

A Off the Belt Parkway near the airport, maybe a mile away.

Q Near Kennedy Airport?

A Yes.

Q Did you ever go there?

A Yes.

Q Who did you go there with?

A Mr. Hasenstab.

Q What did you do with these forms after you got them?

A I tried to substantiate --

MR. FRIEDMAN: I object to this answer so far.

THE COURT: Yes. What did you do with them?

Q What did you physically do with them?

A I filled out amounts on them and dates and tried to use them.

MR. FRIEDMAN: I object to what he tried.

THE COURT: He filled out amounts and dates. After you did that what did you do with the form?

THE WITNESS: I used them to substantiate my expenses for my audit.

Q For tax purposes?

A Yes, for 1973 and 1974.

Q During the year 1976, Mr. Barney, did you have occasion to see Mr. Hasenstab?

A Yes.

Q Last year?

A Yes.

Q How often would you see him?

A Once a month.

Q Where did that take place?

A At the beginning of the year, the regular routine was at the Pan American building, and then we had a mutual arrangement to meet at the restaurant in Brooklyn near the Verrazano Bridge.

Q The Hamilton House you mentioned before.

A The Hamilton House, right.

Q What happened at those meetings?

A We would meet and have lunch.

Q Anything else?

A Regular routine, discuss business and then we would have the payoff.

Q Do you know how much money you paid Mr. Hasenstab on a monthly basis in 1976?

A I know I started the year -- yes, pretty much.

Q How much was that as best you recall?

A I started it off at 2,000, went to 2,500 and by September it was up to 3,000.

Q What happened to your business in 1976?

A It doubled over the previous year.

Q Do you know, sir, what the approximate total dollar volume of your business for 1976 was with Pan Am?

A Yes.

Q How much?

A About $500,000.

Q During your business association with Pan American, did you come to know a man named Nick Di Napoli?

A Yes.

Q How often would you see or speak with Mr. Di Napoli?

A Not too often.

Q How often is tha?

A Maybe in all the times I knew him, I saw him maybe 12 times. It was only on my visits to the purchasing department that I would have a chance to see Nick.

Q Did you ever speak with him on the telephone?

A Yes.

Q How often?

A Maybe 12 times a year.

Q Between 1972, that is when your business with Pan American resumed and September of 1976, do you know how much money you gave to Mr. Hasenstab?

A Pretty accurately, yes.

Q How much is that, sir?

A About $50,000.

Q All in cash?

A All in cash.

Q Over the years when you were with Tabulating Forms, about how many customers did Tabulating Forms have?

A About 500.

Q Did you ever give anything of value to any of the other customers other than Mr. Hasenstab?

A Yes, I did.

Q Did you ever give anything of value to anyone at

Pan American?

A Yes, I did.

Q Who?

A Sol Welger.

Q What did you give to Mr. Welger?

A Some cars.

Q How many cars?

A Three.

Q Who paid the insurance on those cars?

A The company, Tabulating Forms.

Q Did you ever give him anything else?

A The last year, yes.

Q Keep your voice up.

A Yes.

Q When and what?

A The last year, the use of a credit card.

Q Did you ever make payments to anyone from other firms?

A Yes.

Q Which was the first such firm that you made a payoff to?

A A company called Hartz Mountain.

Q Is that the pet food manufacturer?

A Yes.

Q Who did you pay there, sir?

A A fellow by the name of Gene Corey.

Q C-o-r-e-y, is that correct?

A Yes.

Q What was Mr. Corey's position at Hartz Mountain?

A He ran the data processing center.

Q How much did you pay him?

A I paid him about $50,000.

Q Over what period of time?

A Somewhere around '65.

Q Who else did you pay off?

A A fellow named Art Boland.

Q Art Boland?

A Right.

Q Who does he work or did he work for?

A Drexel Burnham.

Q What kind of company is that?

A Brokerage firm.

Q How much did you pay him?

A About $50,000.

Q In cash?

A No, not all cash, some checks.

Q Who else did you pay off?

A Two men from Chemical Bank.

Q Who were they?

A Vince Molinari for about 7,000 and Tony Maniscaldo for about 3,000.

Q About 3,000 to Mr. Maniscaldo?

A Yes.

Q Anybody else?

A A fellow named Angelo S. Citrone.

Q Where did Mr. Citrone work?

A Camelot Business Forms.

Q How much did you pay Mr. Citrone?

A About 25,000.

Q Over how many years, sir?

A About three years, I think.

Q Do you know a man named Notorantonio?

A Yes.

Q Where did Mr. Notorantonio work?

A Applied Devices.

Q How much did you pay him?

A About $12,000.

Q Are you familiar with a company called HIS?

A Yes.

Q Did you pay anybody off there?

A Yes.

Q Who and how much?

A $3,000. There were three men involved. One was Jerry Rosenthal and I don't remember the other two fellows' names.

Q Did you have pay off at Salomon Brothers, the investment firm?

A Yes.

Q Who did you pay there and how much?

A A fellow named O'Brien, I gave him $400.

Q How about Moore Business Forms?

A Another O'Brien.

Q How much did you pay him?

A I guess around 3,000.

Q That includes the payments to his brother?

A Yes.

Q Do you know a man named Heggedn?

A Heggedn.

Q Worked at Dynamics Corporation of America?

A Yes.

Q Did you pay him off, sir?

A Yes.

Q About how much?

A About $1,200.

Q Do you know a man named Bob Just?

A Yes.

Q Where did he work?

A Fiduciary Trust.

Q How much did you pay him?

A $3,000.

Q Other than the people we have just discussed, do you recall paying anybody else?

A A union head.

Q A union head?

A Right.

Q Who was that, sir?

A I forget his name. It was a union originally, the Novelty Workers Union but it had a new name and they struck us and I don't remember the name of the union.

Q When was that and how much did you pay him?

A It was $5,000 and it was in 1970, in September.

Q Is that in connection with your strike?

A Yes.

Q Did there come a time, Mr. Barney, when you were arrested by the FBI?

A Yes.

Q When was that?

A November 1, 1976.

Q After that, did you agree to cooperate with the government?

A Yes.

Q What matter specifically were you arrested for, if you recall?

A I don't know what I was arrested for specifically. I think it was wire fraud.

THE COURT: No, what case.

Q Which of these matters?

A Hartz Mountain.

Q The payoffs to Mr. Corey?

A No.

Q Hartz Mountain?

A Right.

Q That is the case that ultimately was the payoffs to Mr. Corey?

A Right.

Q After that, after you were arrested, did you tell the government about the other companies you mentioned?

A Yes.

Q To your knowledge did the government know anything about them before then?

A No.

Q Since November of '76, have you pleaded guilty?

A Yes.

Q What have you pleaded guilty to?

A To the Drexel Burnham case.

Q Do you know what the charges were?

A Yes.

Q What?

A Wire fraud and conspiracy.

Q Do you know what the maximum sentence you face is?

A I believe it is ten years each.

Q Do you know who the judge is who has your case?

A Judge Owen.

Q Have you been sentenced by Judge Owen yet?

A Not yet.

Q What promises or agreements have been made between you and the government with respect to your testimony?

A Nothing really.

MR. FRIEDMAN: What is the answer?

THE COURT: Nothing really.

MR. FRIEDMAN: Thank you, Judge.

I could hear that.

A I was told --

Q What have you been told?

A I was told I could plead guilty to two counts on one of the cases and that was the case that they chose and that they would tell the judge if I was cooperative.

Q At the time you are sentenced, is that correct?

A Yes.

Q After you agreed to cooperate with the government in November of 1976, did you have occasion to see Mr. Hasenstab?

A Yes.

Q Specifically calling your attention to December 1st, did you see him that day?

A Yes.

Q And calling your attention to January 6th of this year, did you see him that day?

A Yes.

Q Where did you see him on those occasions?

A At the Hamilton House.

Q The restaurant in Brooklyn?

A Yes.

Q Did you have conversations with him?

A Yes.

Q Where did the conversations take place?

A The first meeting was at the table in the men's room and then on the street and in his car.

Q That is December 1st?

A Right.

Q How about the January 6th meeting?

A Same thing but we didn't go to the men's room.

Q On December 1st, was anyone else present during your conversations with Mr. Hasenstab?

A At the table?

Q Yes.

A No, not at the table.

Q Was anyone else present with you and Mr. Hasenstab in the men's room?

A Yes.

Q What happened in the men's room?

A I paid him money.

Q How much?

A A thousand dollars on that occasion.

Q Cash or check?

A Cash.

Q Was anyone else present at that time?

A Right after I passed it, an agent from the FBI knew I was doing it and he came into the men's room.

Q What was that agent's name?

A Lynch.

Q After you paid the thousand dollars to Mr. Hasenstab on December 1st, what did you do? Where did you go?

A To his car.

Q What did you do there?

A Discussed business as usual.

Q On that date, December 1, 1976, and again on January 6, 1977, were you equipped with a recording device?

A Yes.

Q How did you get that recording device?

A It was put on at the FBI headquarters at 69th Street in Manhattan.

Q Was there a tape recorder?

A Yes.

Q Where did you have the tape recorder?

A Strapped to my back.

Q Was it concealed under your shirt?

A Yes.

Q Did you have a microphone?

A Yes.

Q Where was that, sir?

A Concealed under the front of my shirt.

Q Did you consent to wear that recording device?

A Yes.

Q Did you consent to have your conversations on December 1, 1976, and January 6th of this year with Mr. Hasenstab recorded on that recording device?

A Yes.

Q I show you, Mr. Barney, what has been marked Government's Exhibit 10 for identification and I ask you, if you recognize that.

A Yes.

Q What is that, sir?

A It is a recording of the December conversation.

Q How do you recognize it as such?

A I wrote on the outside of the container. Also made a notation on the ribbon.

Q What did you write that makes you recognize that?

A On the container, I put my initials and the date.

Q Since that date, that is since December 1st, have you listened to the tape recording?

A Yes.

Q This tape recording, this large reel, is not the reel that was placed on your person, is it?

A No.

Q That was a smaller recorder?

A Yes.

Q Does Government's Exhibit 10 for identification contain a fair and accurate recording of your conversation with Mr. Hasenstab on December 1, 1976?

A It does.

Q I show you what has been marked as Government's

Exhibit 10A for identification, and ask you if you recognize that.

A Yes.

Q What is that, sir?

A It is our conversation of December.

Q Is that a transcript of Government's Exhibt 10?

A Yes.

Q How do you recognize it?

A I made a notation at the top.

Q Are your initials and yesterday's date on there?

A Yes.

Q Have you had occasion to listen to Government's Exhibit 10 for identification?

A Yes.

Q And compare it with Government's Exhibit 10A?

A Yes.

Q Is 10A a fair and accurate transcription of what is contained in Government's Exhibit 10 for identification?

A Yes.

MR. KINGHAM: Your Honor, Government's Exhibits 10 and 10A for identification are offered in evidence as Government's Exhibit 10 and 10A, respectively.

MR. FRIEDMAN: No objection.

THE COURT: Received.

MR. KINGHAM: I believe your Honor, that because of the lateness of the hour, we have agreed that we will play the recording tomorrow when the equipment has been set up.

MR. FRIEDMAN: Judge, may I withdraw that previous consent? I have no objection to the tape, but I do object to the transcript in evidence.

THE COURT: Very well. The transcript will remain for identification. But I suggest, Mr. Friedman, that it may be used by the jury here in the courtroom as an aid when listening to the tape. Is that agreeable?

MR. FRIEDMAN: I think that is the law, Judge.

THE COURT: It is the custom, anyway, I'm not sure that it is the law, but I think it is the custom.

Will you agree to that?

MR. KINGHAM: I have no objection, your Honor.

THE COURT: Very well.

MR. FRIEDMAN: Yes.

THE COURT: 10 will be received. 10A, the transcript, will remain for identification.

(Government's Exhibit 10 was received in evidence.)

Q I show you, Mr. Barney, what has been marked as Government's Exhibit 11 for identification and ask you if you recognize that, sir.

A Yes.

Q What is that?

A It is a transcript of our January conversation.

Q Is that a recording of the January conversation?

A Yes.

Q Does that also have your initials and yesterday's date on it?

A Yes.

Q Have you had occasion to listen to Government's Exhibit 11 for identification?

A Yes.

Q Is it again a fair and accurate recording of your conversation with Mr. Hasenstab on January 6th of this year?

A Yes.

Q Again, you were wearing a smaller recording device than this reel, were you not?

A Yes.

Q This is a copy?

A Yes.

Q Showing you Government's Exhibit 11A for identification, could you tell the ladies and gentlemen of the jury what that is, sir?

A It is a transcript of that tape.

Q Have you had occasion to listen to Government's

Exhibit 11A for identification?

A Yes.

Q Is 11A for identification a fair and accurate transcript of what is recorded on Government's Exhibit 11?

A It is.

MR. KINGHAM: Your Honor, Government's Exhibit 11 for identification is offered as 11 and we will leave the transcript marked for identification.

MR. FRIEDMAN: No objection.

THE COURT: Received.

(Government's Exhibit 11 was received in evidence.)

MR. KINGHAM: Your Honor, I have no further questions for Mr. Barney at this time pending our playing of the tape and perhaps I will have a few brief questions after that, but that concludes the direct examination with that exception.

THE COURT: Very well.

It is a quarter of 5, and I think I indicated to you,ladies and gentlemen, if I didn't it was my intent, that we recess somewhere between 4:30 and 5 o'clock. A quarter of 5 seems just about inbetween.

I am going to recess at this time and request the jury to return to resume hearing this case tomorrow morning at

9:30 a.m., please, all of you, make every effort to be here promptly.

My plans for tomorrow, subject of course to any change that sudden circumstances dictate, would be for us to proceed from 9:30 to 12:30 for a full morning session, take an hour recess for lunch, resume at 1:30 and continue until 4:30.

Ladies and gentlemen, as you leave, please take with you the admonition that I have given you on prior occasio Please do not discuss the case among yourselves or with anyone else as you go home, at home or when you come back.

In the event you learn anything about this case from any source outside of the courtroom, you are directed to report the matter to me at once on your return.

Finally, please keep an open mind on all facets of the case until the case has been concluded and given to you following my charge. The jury is excused.

You are directed to reassemble in your jury room to resume hearing this case tomorrow morning at 9:30 a.m. Good night.

(Jury left the courtroom.)

THE COURT: The witness is excused. You are directed to return tomorrow morning at 9:30 a.m., Mr. Barney.

THE WITNESS: Yes, sir.

MR. KINGHAM: Thank you, your Honor.

hblt 7

THE COURT: If there are no further matters to take up, court is adjourned.

MR. FRIEDMAN: Thank you.

THE COURT: We will resume at 9:30.

(Adjourned to Thursday, August 25, 1977 at 9:30 a.m.)

- - -

WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
Walter O'Toole (resumed)		164	267	280
Nicholas DiNapoli	284	292	310	
George J. Barney	311			

EXHIBIT INDEX

Defendant	Identification	In Evidence
A-3		170
A-4		172
A-5		176
A-6		178
A-7		182
B		184
C	188	189
D	190	190
E		191
F		194
G	203	203
H		221
I	233	241
K	253	
J-1	258	259
J-2	260	261

EXHIBIT INDEX

Government	Identification	In Evidence
7		318
8,9		352
10		368
11		370

AFFIDAVIT OF PERSONAL SERVICE

STATE OF NEW YORK
COUNTY OF RICHMOND ss.:

EDWARD BAILEY being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 286 Richmond Avenue, Staten Island, N.Y. 10302. That on the 9 day of Dec. ,19 77 at No. 1 St. Andrews Pl., NY

deponent servied the within Appendix
upon
Hon. U.S. Atty., So. Dist. of NY

the Appellee herein, by delivering 1 true copy(ies) thereof to him personally. Deponent knew the person so served to be the person mentioned and described in said papers as the Appellee therein.

Sworn to before me this
9 day of Dec. 1977

Edward Bailey

WILLIAM BAILEY
Notary Public, State of New York
No. 43-0132945
Qualified in Richmond County
Commission Expires March 30, 1978